

Tommie Pointer-Juniel

From: Ann B. Rodgers [abr@chestnutlaw.com]
Sent: Wednesday, April 30, 2008 3:14 PM
To: John Buckley
Cc: governor@puebloofacoma.org; haakuwater@yahoo.com; Chestnut 3 Law
Subject: Acoma Pueblo comments on Environmental Assessment on Homestake Proposed Expansion
Attachments: Comments to NRC on EA 4-25-08.doc

Dear Mr. Buckley, attached to this e-mail are comments to the Environmental Assessment submitted on behalf of the Pueblo of Acoma. Thank you in advance for your consideration of the comments. Sincerely, Ann Berkley Rodgers, attorney for the Pueblo of Acoma

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MEMORANDUM

To: John Buckley, U.S. Nuclear Regulatory Commission

From: Ann Berkley Rodgers

Date: April 25, 2008

Subject: **Proposed Environmental Assessment Related to the Issuance of a License Amendment for Construction of a Third Evaporation Pond, Homestake Mining Company of California, Grants, New Mexico Project NRC Docket No. 040-08903; Source Material License SUA-1471**

This office serves as general legal counsel to the Pueblo of Acoma. This memorandum is being sent to you based on the understanding of Ms. Laura Watchempino, Water Quality Specialist for the Pueblo, that you need to receive comments on the Proposed Environmental Assessment Related to the Issuance of a License Amendment for Construction of a Third Evaporation Pond, Homestake Mining Company of California, Grants, New Mexico Project NRC Docket No. 040-08903; Source Material License SUA-1471, ("the Assessment") by April 30, 2008.

1. At page 9 the Assessment states that the Rio San Jose is an ephemeral stream. This is incorrect. While the movement of water goes below the surface at some points along the river, it is considered to be a perennial river in New Mexico. It is the largest freshwater surface water source in west central New Mexico.
2. At page 10 of the Assessment it states that the San Andres formation is the principle water-bearing formation in the vicinity of the mill. This is very much an understatement. It is the primary groundwater source for the municipalities in the area, and also served as a source of surface water through discharge at Ojo de Gallo Springs until last year. The Assessment also fails to mention that this key aquifer is the source for the "fresh water from an underlying aquifer" that is pumped to form the "hydraulic barrier to seepage" and "reverse the local groundwater gradient so contaminated water can be retrieved." The failure to acknowledge this important fact severely undermines the credibility of your assessment of the effect of this project on the most important groundwater source in the region.

3. At page 13, the statement of Visual Resources fails to mention the San Mateo Mountains, particularly Mount Taylor, the third tallest mountain in the state of New Mexico, or the Cibola National Forest, and it fails to mention Acoma Village, the oldest continuously inhabited village in the United States. It also fails to mention the existence of the Mount Taylor Traditional Cultural Property that is listed on the State of New Mexico Cultural Properties Register and the parallel designation of a Mount Taylor Traditional Cultural Property that has been determined to be eligible for the National Register of Historic Places. Certainly these locations, all closer to the Homestake Mining Company site than El Morro National Monument, are of equal or greater importance than the "Pueblo of Acoma Historical Marker" which is mentioned under visual and recreational areas.

4. Water Quality concerns are not addressed in one cohesive section of the Environmental Assessment. Instead, Water Quality is discussed in terms of Fish and Wildlife and Water Resources, etc. In terms of fish and wildlife, the fact that birds who drink from the ponds do not die on site is used to support a finding of minimal impact. There is no analysis of whether there are higher levels of avian mortality in the general region. There has been no attempt to track the birds that consume the water to determine the extent of any effect.

The discussion of water quality in the water resources section is equally without merit. The Pueblo of Acoma water quality standards apply to waters downstream from the mine site. Groundwater aquifers that Acoma Pueblo relies on extend beyond the Pueblo's lands and any additional contamination of groundwater can be very detrimental to the Pueblo, particularly where there is significant withdrawals from the aquifer so that there is less dilution of contaminants. The area in question is hydrologically complex. For example, although the stream bed may be dry at times, the only uncontaminated groundwater aquifer in the region comes in contact with the surface of the land in the general vicinity of the mine site. Any leakage from the holding ponds can contaminate this aquifer. The problem is compounded because the lack of water flowing in the stream bed of San Mateo Creek except during run-off events does not permit dilution of the contaminated water that ends up in the Creek. Finally, surface water that flows in the Rio San Jose through Acoma Pueblo today is largely supplied by Horace Springs which emits water from the ground into the streambed. The source for this water can be traced back to surface runoff and groundwater flows. The Springs are located just west of the boundary of the Pueblo's federally recognized Pueblo Grant. As such, the water coming out of the Springs would be subject to Acoma Pueblo Water Quality Standards almost immediately. These standards are at least as stringent, if not more stringent than the State water quality standards usually applicable to this type of water source. Any adequate analysis of effects on water quality should consider the more stringent of standards, not the minimum standards. The Assessment does not do this.

5. The omissions discussed at paragraph 1 above, are magnified on page 18 in the discussion of water resources. The Assessment incorrectly states that HMC would not be required to obtain additional permit(s) for increased water consumption for this action from the New Mexico Office of the State Engineer (OSE). Acoma Pueblo will engage in government-to-government consultation with the Office of the State Engineer on April 30, 2008 to address the

application of Homestake Mining Company to appropriate water from the San Andres aquifer to supply the proposed expansion. The approach taken by the Assessment, by treating the temporary diversion permit as expiring in 2008 leads to inaccurate assessment of the effect of this project on the groundwater resource.

Homestake's own documents establish significant declines in the area's groundwater aquifers, including the San Andres. Additional pumping of up to 4,500 acre-feet of water per year, an amount equivalent to a little less than one half of the annual water use of the largest city in the State of New Mexico, the City of Albuquerque (10,0045.72 AFY in 2004, U.S. Water News, www.uswaternews.com/archives.arconserve/5albuwate1.html) will certainly contribute to the declining water table in the San Andres aquifer. While the Assessment does acknowledge that the withdrawal is greater than natural recharge to the basin, it does not acknowledge the great disparity. The area receives an average of less than 12 inches of precipitation or less. Even if one ignores the fact that all precipitation does not make it into an aquifer, the recharge to the aquifer from the 185 acre proposed expansion in Alternative B, without the expansion is no more than 185 acre-feet per year, leaving a deficit of 4,315 acre-feet to be mined from the aquifer. This simple calculation does not even take into account that if the proposed expansion takes place there will be even less infiltration of precipitation into the aquifer due to runoff and soil covering or compaction. The failure of the Assessment to adequately discuss this effect on the only uncontaminated groundwater aquifer in the region is unsatisfactory.

The Assessment takes the position that it need not discuss the effects of this expanded appropriation of groundwater because it is the responsibility of the New Mexico Office of the State Engineer to grant or deny an appropriation. This approach does not meet the responsibility of a federal agency under the National Environmental Policy Act to take a hard and independent look at the effects of an undertaking.

6. The assessment at Page 16 states that the Alternative B is the only alternative that still has native soils in place on at least a part of the location, and that use of the site will destroy 90% of that remaining native soil cover. In the discussion of Historical and Cultural Resources, the Assessment states that adjacent areas that were bladed in 1995 and exposed "a number of new archaeological sites in the immediate area." It goes on to states that "it is likely that aeolian deposits are covering intact subsurface archaeological remains in the undisturbed portions of the survey area." Therefore, of all the alternatives, the one selected as the preferred alternative is the one with the greatest likelihood of disturbing previously undisturbed archaeological resources. At the same time there is one alternative that does not have any cultural sites located within its boundaries, and includes no native soil cover. That is Alternative D. So, there is one alternative where there could be a significant effect and one where there is none. At the same time, the Assessment concludes that under any alternative the adverse environmental impacts to these resources would be small. This conclusion is inconsistent with the information provided in the analysis.

CONCLUSION

The Pueblo of Acoma submits that the Environmental Assessment prepared for this proposed federal action does not meet the minimal standards required by federal law to support a finding of no significant impact. The Assessment contains clear misstatements of fact and ignores known facts that do not support the selection of Alternative B. The Pueblo submits that if all known facts were considered, there would be a finding of significant effect, if for no other reason that this expansion is being used to attempt to justify increased groundwater mining on an annual basis equal to one half of what a city of 600,000 people requires, and that this is being taken from the only uncontaminated groundwater source in the region. Based on the facts stated in the Assessment, the preferred alternative for the Pueblo of Acoma is the one that disturbs the least area: alternative D.