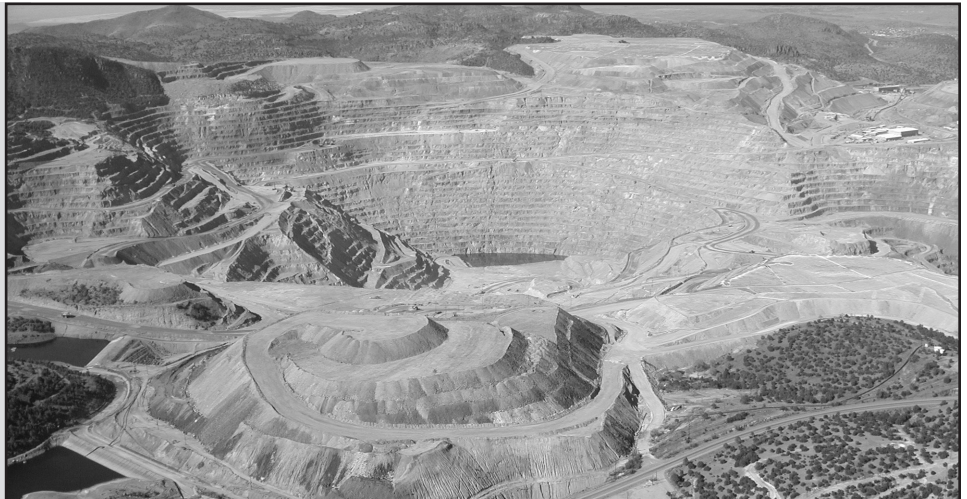


*Given the hydro-geology around the Tyrone and Chino mine sites, there may be instances in which a point of compliance measurement may not adequately protect groundwater and may serve to weaken reclamation requirements at the mines.*



measurement point, referred to as "point of compliance". New Mexico's WQA does not currently provide for a specifically defined point at which water quality standards must be met, but instead requires that "any place of withdrawal of water for present or reasonably foreseeable future use" must be protected from contamination. In the case of the Tyrone mine, NMED has interpreted this as the entire mine site. The appellate court opinion states:

"Although the mine is a place where water is withdrawn for present use, it would be incorrect to conclude that as a consequence, the entire mine is a measuring point and must meet water quality standards everywhere. Not only is such a conclusion overbroad, it is also unrealistic to require all water at the Tyrone mine site to meet drinkable water standards. Thus even though it is a conclusion that is arguably within the plain language of the statute, we reject such a broad and impractical interpretation of the Act [Water Quality Act]; so interpreted, it would not reflect a balance between the competing policies of protecting water and yet imposing reasonable requirements on industry."

The case was remanded back to the WQCC for limited proceedings on the issue of reasonableness of the standard applied for determining permit conditions. Phelps Dodge, NMED and GRIP as a "friend of the court" filed subsequent petitions for *writ of certiorari* to the NM Supreme Court to review the appellate court decision, but it was denied. The case is expected go before the WQCC in early 2007.

In question in both the Chino and Tyrone appeals is whether or not stockpiles in and around the pit, such as these in the foreground, should be reclaimed.

#### **Chino Closure Plan**

In August 2003, GRIP filed an appeal of the Chino Closure Plan approved by the NMED earlier that year. The plan resulted from a secret deal negotiated by the administration of former New Mexico Governor Gary Johnson and Phelps Dodge that allowed the company to do just what it was not allowed to do by NMED at the Tyrone mine: leave the sides of the stockpiles within a large area around the Santa Rita pit uncovered. Additionally, the plan allowed PD to dilute its contaminated water with 8,878 acre-feet of potable groundwater to meet water quality standards. This amounts to 2.9 billion gallons of clean water contaminated by dilution every year and is three times the amount of water Silver City uses annually. GRIP argued that this use of clean groundwater to dilute contaminated mine water is contrary to the state's policy of beneficial use and the NMED should require implementation of state-of-the-art treatment technologies.

After PD's attempt to get GRIP's case dismissed on a technicality, GRIP fought all the way to the NM Court of Appeals for the right to get the case heard. The Court of Appeals sided with GRIP and remanded the case back to the Water Quality Control Commission. The NM Supreme Court rejected PD's attempt for further review through a *writ of certiorari*. Although our hearing date was set for this November, GRIP has been working cooperatively with NMED and PD on examining

treatment alternatives that would remove contaminants while also minimizing the amount of dilution water used. The dilution part of our appeal is on hold pending results of studies currently underway. Similarly, the open pit capture zone component of our appeal is also on hold until a decision is made on the Tyrone closure plan as discussed above.

#### **Industry amendments to the Water Quality Act**

At a July meeting of the State Legislature's interim Radioactive and Hazardous Materials Committee, the New Mexico Mining Association discussed its plan to push through an amendment to the Water Quality Act related to "point of compliance" during the 2007 legislative session. This issue was specifically discussed by the Court of Appeals in its decision on PD's Tyrone appeal as a possible standard by which to determine conditions of the closure permit. A change in the law has significant implications for reclamation at the Chino and Tyrone mines. Given the hydro-geology around the Tyrone and Chino mine sites, there may be instances in which a point of compliance measurement may not adequately protect groundwater and may serve to weaken reclamation requirements at the mines.

GRIP and partners in the New Mexico Mining Act Network will work to ensure that the state's Water Quality Act is not weakened by industry this upcoming legislative session. Stay tuned for updates as this issue develops.