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COMMUNITIES  
BY PROTECTING OUR  
ENVIRONMENT

►Responsible Mining   ►Healthy Rivers   ►Community Planning   ►Aquifer Protection

## **Phelps Dodge Appeals Permit for Discharge of Toxics in Tyrone State commission will decide future of groundwater at closure of Grant County mine.**

In its continued efforts to get out of legal environmental requirements when the Tyrone copper mine closes, Phelps Dodge (PD) was back in front of the state of New Mexico Water Quality Control Commission (WQCC) in Santa Fe in July and August. Company officials argued at the WQCC hearing that the giant copper mining company didn't need to "regrade" and cover stockpiles in and around the Tyrone mine open pit. Regrading and covering would prevent acid rock drainage and protect groundwater quality below the mine site. The outcome of the case will determine if community groundwater resources in the Mimbres and Gila basins is protected. The state body's decision also has implications for groundwater protection around the state.

Phelps Dodge, now a subsidiary of Phoenix-based Freeport-McMoRan, appealed two conditions for closing the Tyrone site that were originally issued in April 2003. Company officials argued that water under the mine site is not "a place of withdrawal of water for present or reasonably foreseeable future use" and thus is not protected under the state's Water Quality Act. This was not the first time that Phelps Dodge has objected to a crucial facet of the process known as "reclamation," which is the process of safely cleaning up a mine. After a 10-day appeal hearing back in June of 2004, the WQCC reaffirmed the same two conditions.

PD took the case to the courts, appealing the decision to the New Mexico Court of Appeals. In June 2006, the Court of Appeals reversed the

WQCC's decision, remanding the case back to the Commission so that it could "create some general factors or policies to guide its determination" of where water quality standards must be met. Since late July 2007, the WQCC has been hearing testimony from Phelps Dodge, the New Mexico Environment Department (NMED) and GRIP technical witnesses regarding factors that should be used in a determination.

Through its nine witnesses, Phelps Dodge again argued that water under the Tyrone mine site isn't required to be protected under the Water Quality Act. PD contends that it will continue to pump and treat contaminated groundwater from three open pits and various wells, for hundreds of years if necessary, to prevent the existing and future

see PD Appeals Permit, p6

## **New Mexico's Last Wild River Gets A Second Chance Governor Richardson Redirects the Gila River Planning Process**

While the whole community celebrates this summer's rejuvenating monsoon, we can also celebrate New Mexico Governor Bill Richardson's recent policy statement recognizing the importance of the Gila and San Francisco rivers and his desire to protect them as New Mexico realizes its benefits under the Arizona Water Settlements Act (AWSA). The governor's redirection of the AWSA planning process makes us hopeful that we can find a way to balance our future water needs with conservation of these important riparian areas.

Signed into law in December 2004, the Arizona Water Settlements Act settles long-standing Native American water rights claims in Arizona. The Gila Settlement, which is an amendment to the AWSA, specifies New Mexico's right to use 14,000 acre-feet per year of Gila River water originally promised to the state under

the 1968 Central Arizona Project authorizing legislation. (An acre-foot is a vast amount of water: the amount that would cover one acre of land in a foot of water.) The Act also provides up to \$128 million in federal subsidy for construction of a water project.

The Gila and San Francisco rivers already carry less water than they did historically due to the demands of irrigation and mining, as well as the recent drought. Additional withdrawals from a water development project would alter the rivers' hydrologic cycle and likely unravel the ecological integrity of the Gila and San Francisco. Flow reductions due to global warming may compound the impacts of a project.

In spite of the fact that local communities in southwestern New Mexico have not identified the need for any water project on the Gila, the New Mexico Interstate Stream Commission

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