



Multicultural Alliance for a Safe Environment

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September 24, 2015

David Mayerson, Permit Contact
Ground Water Quality Bureau
New Mexico Environment Department
1190 St. Francis Dr.
P.O. Box 5469
Santa Fe, NM 87502-5469

RE: Additional MASE Comments on the Renewal and Modification of Discharge Permit DP-61; Rio Grande Resources Corporation

Sent via email to david.mayerson@state.nm.us

Dear Mr. Mayerson:

The Multicultural Alliance for a Safe Environment herein submits the following comments in response to the revised Discharge Permit 61 for Rio Grande Resources Corporation (RGRC) issued for public comment by the New Mexico Environment Department (NMED) on August 26, 2015.

RGRC's 1995 Discharge Permit-61 Has Expired

Draft DP-61 has been improperly characterized as a renewal and modification, despite the fact that the permit was last renewed in 1995. The regulatory summary for DP-61 states that the permit has been in timely renewal since 1999, but no discharge permit renewals have been publicly noticed or approved by NMED since 1995. NMED's failure to act on Rio Grande Resources Corporation's (RGRC) 1999 renewal application has resulted in the expiration of DP-61.

The Secretary has no authority to approve discharge permits, modifications, or renewals for a period longer than 7 years. A discharger is required to give prior written notice to the department of the date that the discharge is to commence, and the term *shall not* exceed 5 years from that date. *20.6.2.3109.H(4); NMAC* The current renewal term for this proposed modification of DP-61 is 5 years from the date of issuance, after which the permit will automatically expire. *Draft DP-61 at p. 20*

DP-61's expiration date of 1-31-2000 is noted on RGRC's 2013 Application for Modification, while the mine was on stand-by status. RGRC has not demonstrated that it meets New Mexico Water Quality Act regulatory requirements for a timely renewal of its 1995 discharge permit. *NMSA 1978, § 74-6-5-(I)*

NMED has a duty to issue valid and enforceable discharge permits, and to periodically review those permits to determine whether any discharge might violate New Mexico's water quality standards or fail to protect ground and surface water for present and potential future use, the public health and property, or abate past pollution. *20.6.2.3109 NMAC*

MASE asserts that RGRC's 1995 DP-61 expired in 2000 and that NMED had an administrative duty to terminate DP-61 before issuing a new draft for public comment and/or opportunity to request a public hearing. In the alternative, NMED could have suspended DP-61 during RGRC's multiple stand-by periods while still requiring RGRC to inspect and monitor its facilities, and submit the required quarterly reports.

Any new future draft discharge permit for the Mt. Taylor mine should include conditions for prolonged suspension of operations, with corresponding permit conditions during the suspension, and outline procedures for the re-activation of discharge permits that have expired.

Additional Sampling and Conditions Requested

(1) MASE recommends the collection of sediment and/or stream samples for the constituents listed in **Table 1** at selected points downstream of Outfall 001. The large volumes of water historically discharged on a daily basis have most likely infiltrated the eroded channel beds of San Lucas Canyon and San Miguel Creek beyond the outfall.

(2) All contaminated sediments removed from ponds, above and below the existing ore pad, to an off-site licensed uranium mill. A clay-lined cell on top of the South Waste Rock Pile will not protect the public or the environment during severe storm events and is therefore unacceptable.

(3) NMED should retain the option of temporarily suspending RGRC's authorization to discharge in the event of any contingency that could adversely impact water quality in excess of 48 hours. Discharges should not be allowed to resume until all water quality exceedances have been abated.

(4) Emergency plans for public notification and evacuation in the event of a contingency, such as storm water overflows, erosion from ore and waste rock piles, pipeline breaks, IX Plant shutdowns, pond leakage, or other system failures are missing in the revised draft DP-61.

(5) NMED should retain the option of temporarily suspending RGRC's authorization to discharge if any regulatory contingencies impede mine operations: (a) The Mt. Taylor Mine is not returned to active status; (b) RGRC's NPDES permit is not re-activated; (c) RGRC is not issued a valid dewatering permit from the New Mexico Office of the State Engineer; or (d) any other state, federal, or local regulatory delay; or (e) court order.

(6) MASE requests that RGRC conduct a post-Stage 2 Abatement seepage study at the mine site to assess the extent and longevity of contaminant releases to the alluvium or bedrock aquifers from the South Waste Rock Pile and along 22 miles of canyon and creek bed beyond Outfall 001 *prior to* restarting mine operations.

Mt. Taylor TCP

MASE acknowledges our diverse heritage and rich cultural traditions throughout the Mt. Taylor region and wholeheartedly supports New Mexico's designation of Traditional Cultural Property (TCP) on Mt. Taylor. The Mt. Taylor TCP provides an additional measure of protection for our region's multi-cultural history and irreplaceable cultural property.

We urge NMED to make every effort to honor the many facets of New Mexico's multi-cultural history and to facilitate the utmost protection of one of our state's most treasured landscapes and source water for a myriad of uses besides mining.

In conclusion, DP-61 should not be re-issued or renewed until Rio Grande Resources Corporation has demonstrated that DP-61 has met all requirements for re-issuance or renewal, in accordance with *20.6.2.3106 NMAC*.

Respectfully,

Susan R Gordon

MASE Coordinator

On Behalf of MASE Core Groups:

Bluewater Valley Downstream Alliance (BVDA)

Post-71 Uranium Workers Committee

Laguna-Acoma Coalition for a Safe Environment (LACSE)

Eastern Navajo Dine Against Uranium Mining (ENDAUM)

Red Water Pond Road Community Association (RWPRCA)

Cc: Tom Blaine, NM State Engineer
Ron Curry, EPA Administrator, Region 6
Mark Purcell, EPA Superfund Division (6SF-TR)