

IN THE FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

ENDORSED
First Judicial District Court
JUL 15 2011

Santa Fe, Rio Arriba &
Los Alamos Counties
PO Box 2268
Santa Fe, NM 87504-2268

EASTERN NAVAJO DINÉ AGAINST URANIUM MINING,
its individual members, LARRY KING, and CHRISTINE SMITH

Plaintiffs,

v.

D101CU 0011 00070
Case No.

DAVID MARTIN
SECRETARY OF THE ENVIRONMENT, RAJ SOLOMON
DEPUTY SECRETARY OF THE ENVIRONMENT and
the NEW MEXICO ENVIRONMENT DEPARTMENT

Defendants.

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

1. Plaintiffs Eastern Navajo Diné Against Uranium Mining ("ENDAUM"), its individual members, and representative members Larry J. King, and Christine Smith ("Plaintiffs") pursuant to New Mexico Rule of Civil Procedure Rule 1-066 respectfully submit the following Motion for Preliminary Injunction enjoining the New Mexico Environment Department ("NMED") from allowing Hydro Resources, Inc. ("HRI") from conducting any discharges on the southeast ¼ section of Section 8, Township 16 N, Range 16 W ("Section 8"), in the community of Church Rock, New Mexico, prior to making a determination to grant a new discharge permit to HRI.

2. Plaintiffs are entitled to a preliminary injunction to prevent significant, irreparable damage to land, air and water due to the Defendants' acceptance, without authority to do so, of HRI's discharge permit application as a application for renewal rather than a new permit application. Further, Defendants' authorization of discharging activities on Section 8 will

likewise cause significant, irreparable damage to Plaintiffs' interests. In support of their Motion, Plaintiffs state the following:

3. On April 1, 2001, Hydro Resources, Inc., submitted an application to Defendant the New Mexico Environment Department Groundwater Bureau purporting to seek renewal of its discharge permit number DP-558 ("DP-558"). Exhibit 1¹ to accompanying Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Injunction.

4. In its application to renew DP-558, HRI asserted that its renewal application was timely apparently because it had been previously timely renewed and that intervening litigation made jurisdiction over Section 8 unclear. *Id.*

5. Defendant NMED notified the public that it received HRI's application on May 13, 2011.

6. According to NMED records, DP-558 was originally approved by NMED's predecessor agency, the Environmental Improvement Division, on November 2, 1989, and last renewed by NMED in 1996. Exhibit 14. If valid, DP-558 would allow HRI to conduct *in situ* leach ("ISL") uranium mining at Section 8.

7. By letter dated March 23, 2011, Groundwater Bureau Chief, William Olson, erroneously notified HRI that its renewal application was timely "within the meaning of 20.6.2.3016.F NMAC". Exhibit 8.

8. Mr. Olson properly instructed HRI that NMED must approve HRI's DP-558 permit application before HRI could begin mining at Section 8. *Id.*

9. On April 6, 2011, however, Mr. Olson received an email from HRI's representative complaining that HRI should be able to begin mining at Section 8 with its current

¹ To avoid confusion, unless otherwise noted, exhibit numbers in this Motion refer to the exhibits attached to the accompanying Memorandum of Law in Support of Plaintiffs' Motion for a Preliminary Injunction.

discharge permit. Exhibit 9. Specifically, HRI's representative alleged that NMED's position that HRI could not begin mining until NMED had approved its permit application was contrary to § 20.6.2.3106.F NMAC. *Id.*

10. On May 26, 2011, while Mr. Olson was on vacation, Deputy Environment Secretary Raj Solomon summoned George Shuman, a member of the Groundwater Bureau's staff, to his office.

11. During this meeting, Mr. Solomon instructed Mr. Shuman to re-issue Mr. Olson's March 23 letter without the "problematic sentence" prohibiting HRI from conducting discharging activities at Section 8 until NMED approves HRI's discharge permit application. Exhibit 11. HRI and Defendants viewed this sentence as "problematic" because the restriction on HRI being able to mine prior to receiving approval of its permit application was "hindering Hydro Resource's ability to obtain financing for the mine development project". *Id.*

12. Mr. Shuman re-issued the letter on May 27, 2011. Exhibit 10.

13. Mr. Shuman summarized his meeting with Mr. Solomon in an email to Mr. Olson. Exhibit 11. Furthermore, Mr. Shuman provided emails to Mr. Olson demonstrating that Mr. Solomon had reviewed and approved the May 27 letter. Exhibit 12.

14. This sequence of events apparently took place without Mr. Olson's knowledge or consent. Exhibit 13.

15. The function of a preliminary injunction is to preserve the status quo pending a final determination of the rights of the parties. *Insure New Mexico, LLC v. McGonigle*, 128 N.M. 611, 614, 995 P.2d 1053, 1056 (Ct. App. 2000).

16. Whether to grant a preliminary injunction is a matter that is committed to the discretion of the trial court. *National Trust for Historic Pres. v. City of Albuquerque*, 117 N.M.

590, 595, 874P.2d 798, 803 (Ct. App. 1994). The test for granting a preliminary injunction includes four elements:

(1) the plaintiff will suffer irreparable injury unless the injunction is granted; (2) the threatened injury outweighs any damage the injunction might cause the defendant; (3) issuance of the injunction will not be adverse to the public's interest; and (4) there is a substantial likelihood plaintiff will prevail on the merits.

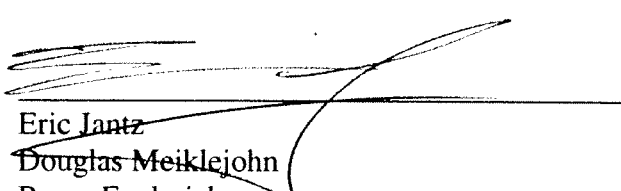
Lubalbo v. Hymes, 115 N.M. 314, 318, 850 P.2d 1017, 1021 (Ct. App. 1993); *see also* Rule 1-066 NMRA (2011).

17. In the present matter, under any formulation of the four factors, the Plaintiffs are entitled to an immediate injunction against the Defendants prohibiting them from allowing HRI to conduct any discharging activities on Section 8.

18. This Motion is supported by the Plaintiffs' accompanying Memorandum in Support of a Preliminary Injunction.

19. Counsel for Plaintiffs contacted Counsel for Defendants regarding concurrence or opposition to this Motion. Defendants oppose this Motion.

Respectfully submitted this 18th day of July, 2011, by:



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~~Douglas Meiklejohn~~

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of July, 2011, I have delivered a copy of the foregoing pleading in the above-captioned case via email and U.S. mail, fist class to the following:

Ryan Flynn
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Mark Pelizza
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By: _____

A handwritten signature in black ink, written over a horizontal line. The signature is stylized and appears to be the name of the person certifying the service.