

ENDORSED
First Judicial District Court

JUL 15 2011

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

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

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

Plaintiffs,

v.

D101CO 2011 02270
Case No.

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

Defendants,

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

STATEMENT OF THE CASE

1. This case involves a misinterpretation by David Martin, Secretary of the Environment, Raj Solomon, Deputy Secretary of the Environment, and the New Mexico Environment Department ("the Defendants") of regulations governing ground water discharge permits issued pursuant to the New Mexico Water Quality Act. Eastern Navajo Diné Against Uranium Mining ("ENDAUM"), its representative individual members, Larry J. King, and Christine Smith (collectively, "the Plaintiffs") seek a declaratory judgment that the Defendants have no authority under the Water Quality Act or its implementing regulations to accept Hydro Resources, Inc.'s ("HRI") DP-558 discharge permit application as a permit renewal. Plaintiffs also seek a declaratory judgment that the Defendants have no authority to allow HRI to conduct *in situ* leach ("ISL") uranium mining operations at the southeast ¼ section of Section 8,

Township 16 N, Range 16 W (“Section 8”) unless the Defendants grant HRI’s discharge permit application.

2. Plaintiffs also seek to enjoin Defendants from allowing HRI to conduct discharging activities at Section 8 until they have made a final determination to grant HRI’s discharge permit application.

JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to the New Mexico Const. Art. VI §13.

4. Venue is proper in this Court pursuant to NMSA 1978, §38-3-1(A) as the events complained of in this cause of action occurred in the County of Santa Fe, State of New Mexico, and the Defendants are located in the County of Santa Fe, State of New Mexico.

PARTIES

5. Plaintiff ENDAUM was formed in 1994 in response to concerns in the Crownpoint and Church Rock communities about the proposed HRI mines. ENDAUM represents community members in Crownpoint, Church Rock, and surrounding communities.

6. ENDAUM representative member Plaintiff Larry J. King lives on the southwest portion of Section 17, Township 16 N, Range 16 W, directly adjacent to and across a two lane highway from HRI’s proposed mine on Section 8. Mr. King will be affected by HRI’s Section 8 operation because of his close proximity to the proposed mine site. Mr. King uses and enjoys the land adjacent to and nearby the proposed uranium mining operation.

7. ENDAUM representative member Plaintiff Christine Smith lives within 2000 feet of HRI’s central uranium processing plant in Crownpoint. Ms. Smith uses and enjoys the land adjacent to and nearby the proposed central processing plant.

8. Defendant David Martin, is the Secretary of the Environment Department for the State of New Mexico.

9. Defendant Raj Solomon is the Deputy Secretary of the Environment Department for the State of New Mexico.

10. Defendant New Mexico Environment Department is a state agency created by the Environmental Improvement Act, NMSA 1978, § 74-1-2 *et. seq.*, and charged with environmental management, including protecting surface and groundwater. *Id.*, § 74-1-7; *see also*, Water Quality Act, NMSA § 74-6-4 *et. seq.*

GENERAL ALLEGATIONS

11. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 - 10.

12. On April 1, 2001, a uranium mining company called Hydro Resources, Inc., submitted an application to the Groundwater Bureau of the Defendant New Mexico Environment Department (“NMED”) purporting to seek renewal of its discharge permit number DP-558 (“DP-558”).

13. The Water Quality Act and its implementing regulations require that HRI obtain a discharge permit before it can begin mining uranium using the *in situ* leach (“ISL”) method of mining.

14. ISL mining involves injecting chemicals into a uranium ore bearing aquifer through a series of wells, which react with the uranium in the aquifer.

15. The uranium saturated groundwater is brought to the surface through another series of wells and the uranium is extracted and processed.

16. In its DP-558 application, HRI contends that it initially received DP-558 in 1989 and timely renewed the discharge permit in 1996.

17. HRI's DP-558 application does not discuss or cite any other renewal application or NMED determination of renewal other than the 1996 renewal determination.

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

19. Like HRI's DP-558 application, NMED records indicate that DP-558 was originally approved by the Environmental Improvement Division (the predecessor to the defendant NMED) on November 2, 1989, and that DP-558 was last renewed in 1996.

20. When it was in effect, DP-558 allowed HRI to conduct ISL uranium mining at the southeast ¼ section of Section 8, Township 16 N, Range 16 W, in the community of Church Rock ("Section 8").

21. 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".

22. In that same letter, Mr. Olson properly instructed HRI that NMED must approve HRI's DP-558 permit application before HRI could begin mining at Section 8.

23. 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 discharge permit.

24. 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, which provides that a discharge permit is valid and enforceable if a permit renewal application is submitted to NMED 120 days prior to the discharge permit's expiration.

25. On May 26, 2011, while Mr. Olson was on vacation, Defendant Deputy Environment Secretary Raj Solomon summoned George Shuman, an NMED technical staffer within the Groundwater Bureau, to his office.

26. During this meeting, Mr. Solomon instructed Mr. Shuman to re-issue Mr. Olson's March 23 letter without the "problematic sentence" that HRI could not begin mining until NMED approves HRI's discharge permit application, because the restriction on mining prior to receiving approval of its permit application was "hindering Hydro Resource's ability to obtain financing for the mine development project".

27. Mr. Shuman re-issued the letter at Mr. Solomon's direction on May 27, 2011.

28. Furthermore, Mr. Shuman provided emails to Mr. Olson demonstrating that Mr. Solomon had reviewed and approved the May 27 letter.

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

CLAIMS FOR RELIEF

COUNT I

THE NEW MEXICO ENVIRONMENT DEPARTMENT HAS NO AUTHORITY TO ACCEPT HRI'S DP-558 APPLICATION AS A DISCHARGE PERMIT RENEWAL.

30. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1-29.

31. Mr. Olson's statement in the March 23 letter that DP-558 is in "timely renewal" is factually inaccurate and legally unsupportable.

32. The Water Quality Act regulations provide that NMED may issue a discharge permit renewal for the term of five years after the discharge has begun - in the case of new discharges - but in no event may issue a discharge permit for longer than seven years. § 20.6.2.3109.H.4 NMAC.

33. In this case, HRI initially received DP-558 on November 2, 1989.

34. HRI timely filed for a renewal in 1996 and its renewal application was approved on August 16, 1996.

35. However, neither HRI's discharge permit application nor NMED's records contain any indication that HRI applied for or received renewals in 2003 or 2010 as required by § 20.6.2.3109.H.4 NMAC.

36. Because HRI did not apply for renewal of DP-558 in 2003 or 2010 as required by § 20.6.2.3109.H.4 NMAC, DP-558 expired in 2003.

37. Therefore, NMED improperly considered HRI's application an application for renewal rather than an application for a new permit, and the NMED has no authority to accept HRI's application as a permit renewal.

38. Plaintiffs are entitled to the judgment of this Court declaring that the Defendants have no authority under the Water Quality Act's implementing regulations to accept HRI's DP-558 application as an application for renewal of a discharge permit.

COUNT II

NMED HAS NO AUTHORITY TO AUTHORIZE HRI TO CONDUCT ANY DISCHARGING ACTIVITIES AT SECTION 8

39. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 - 38.

40. Because HRI failed to timely renew DP-558 as alleged in paragraphs 30-38, above, it does not have a valid discharge permit.

41. The regulations implementing the Water Quality Act provide that no person may "cause or allow effluent or leachate to discharge so that it may move directly or indirectly into ground water unless he is discharging pursuant to a discharge permit issued by the secretary". § 20.6.2.3104 NMAC.

42. Under the governing regulations, therefore, HRI may not begin mining at Section 8, per Mr. Olson's instructions in his March 23 letter.

43. Moreover, Mr. Solomon had no authority to direct Mr. Shuman to rescind Mr. Olson's March 23 letter to accommodate HRI's financial concerns or for any other reason.

44. Plaintiffs are entitled to the judgment of this Court declaring that the Defendants have no authority under the Water Quality Act's implementing regulations to allow HRI to conduct discharges at Section 8 until they have made a determination whether to grant or deny HRI's discharge permit application.

45. Plaintiffs will suffer irreparable harm, and otherwise have no adequate remedy at law, if Defendants allow HRI to conduct discharges at Section 8 prior to determining whether to grant HRI's discharge permit application.

46. Plaintiffs are entitled to preliminary and permanent injunctive relief prohibiting Defendants from allowing HRI to conduct discharging activities at Section 8 until they have made a final determination to grant HRI's discharge permit application.

PRAYER FOR RELIEF

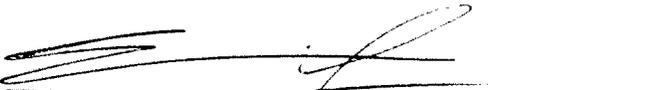
WHEREFORE, Plaintiffs ENDAUM, its individual members, Larry King, and Christine Smith respectfully request that this Court, pursuant to the Declaratory Judgment Act, NMSA 1978, § 44-6-1 *et. seq.* and New Mexico Rule of Civil Procedure Rule 1-066:

1. Declare that Defendant New Mexico Environment Department has no authority under § 20.6.2.3109.H.4 NMAC to accept Hydro Resources, Inc.'s DP-558 discharge permit application as a renewal application;

2. Declare that Defendants had no authority to determine that Hydro Resources, Inc. has an existing and enforceable discharge permit;

3. Declare DP-558 void and unenforceable;
4. Grant Plaintiffs an injunction barring Defendants from allowing Hydro Resources, Inc. to conduct any discharges at Section 8 unless and until Defendants make a decision to grant a new discharge permit application from Hydro Resources, Inc.; and
5. Grant any other relief this Court deems proper.

Respectfully submitted this 13th day of July, 2011.



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