Administrative Office of the Courts

FOR IMMEDIATE RELEASE

March 8, 2018

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STATE SUPREME COURT AFFIRMS ADOPTION OF WATER POLLUTION REGULATIONS FOR COPPER MINING

SANTA FE – The New Mexico Supreme Court on Thursday affirmed the state Water Quality Control Commission's adoption of regulations governing groundwater contamination at open pit copper mines.

The Court ruled unanimously that the regulations, known as the "Copper Rule," were valid under the state's Water Quality Act (WQA). The commission adopted the regulations in 2013.

The Court rejected arguments by the New Mexico Attorney General and other groups, including Amigos Bravos, the Gila Resources Information Project and Turner Ranch Properties, that challenged the regulations

"We cannot conclude that the Copper Rule violates the WQA because it purportedly permits rather than prevents contamination when the Cooper Rule's plain terms contain an abundance of provisions that afford significant groundwater protection at copper mine facilities designed to prevent pollution," the Court said in an opinion written by Chief Justice Judith K. Nakamura.

When open pit mines become deep enough to reach the groundwater table, the water flows toward the bottom of the pit. Under the Copper Rule, pollution standards do not apply to the area of the pit in which water gathers. However, the commission's regulations "advance a comprehensive containment strategy" for acidic mining contaminants, according to the Court. Contaminated water in the pit is to be removed by evaporation or pumping, and groundwater monitoring wells are required outside the pit area to determine whether water quality standards are met at those locations.

Water quality "standards may be exceeded within the area of open pit hydrologic containment not, as Petitioners contend, because the Copper Rule invites pollution there, but because the Copper Rule accepts that some discharge contamination is inevitable, seeks to contain that

contamination, and relies on the hydrologic phenomenon produced by the open pit to contain it," the Court said.

The Copper Rule's waiver of the water quality standards "in the area of open pit hydrologic containment reflects policy preferences and strategic choices designed to mitigate the environmental harms inherent in open pit copper mining," the Court said. "The waiver provision in no way invites industry to contaminate freely in that area."

The Court explained that its task in the appeal was to determine whether the regulations violated the Water Quality Act—not assessing "what is the most effective and efficient way to combat the adverse consequences of open pit copper mining." The justices rejected claims that the Copper Rule was invalid because it differed from past regulatory approaches for controlling water discharges at copper mines.

"To the extent the Copper Rule is a departure from past Commission practice, the law makes clear that the Commission is not constrained by its prior practices," the Court said.

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To read the decision in *Gila Resources Information Project v. NM Water Quality Control Commission*, Nos. S-1-SC-35279, -35289, & -35290 slip op. (N.M. S. Ct. March 8, 2018), please visit the New Mexico Compilation Commission's website using the following link:

http://www.nmcompcomm.us/nmcases/nmsc/slips/SC35,279.pdf

The Supreme Court also filed a decision Thursday in *State v. Gardner*, No. S-1-SC-35981 (N.M. Sup. Ct. March 8, 2018) (Non-precedential disposition; *See* Rule 12-405 NMRA) . To read the decision in *Gardner*, please visit the New Mexico Compilation Commission's website using the following link:

http://www.nmcompcomm.us/nmcases/NMSCUnreported/2018/SC35981.pdf