

Challenges to Protecting Mount Taylor

The June 5, 2009 designation of the Mount Taylor Traditional Cultural Property (TCP) by the New Mexico Cultural Property Review Board (CPRB) was the result of a petition filed in 2007 by five tribes — Acoma, Laguna, Hopi, Navajo and Zuni — to recognize and protect a mountain held sacred by each of the tribes and many others in the region (www.nmhistoricpreservation.org/documents/cprc/FINALORDER14September09.pdf). Yet in the year since the designation, uranium companies are moving aggressively to undermine its effect. These companies have attacked the designation in the court and are seeking permits to restart mining activity on or next to the TCP area.

RACIAL TENSIONS

In addition, the controversy over the TCP designation fueled racial tensions in the area — a series of brutal beatings of native individuals in Grants, NM — occurred in the week following the TCP designation. Published reports from witnesses state that the admitted attacker refers to the TCP designation as a motivating factor. The local police identified the beatings as “hate crimes.” The cases are being investigated by the Federal Bureau of Investigation.

But in the months after the assaults, local police leadership has attempted to down play the severity of the attacks and its association with the TCP action, despite reports to the contrary at the time of the incidents. The Grants police leadership attributed the animosity in the community to the media coverage. Police Chief Steve Sena chose to call the beatings “an act of stupidity,” and that media assertions about what the attacker said “are very hurtful to the community.” (www.hcn.org/issues/41.21/dueling-claims/article_view?b_start:int=6&-C=)

Following the attacks, the Navajo Nation Human Rights Commission (NNHRC) initiated a dialogue with the City of Grants to address what Navajo Nation Vice-President Ben Shelley called reminders of the historical racial intolerance his Navajo forefathers faced during the early parts of “New Mexico’s dark history.” (www.gallupindependent.com/2009/07/July/070909beratinghate.html)

The dialogue process resulted in an unprecedented cooperative agreement between the Navajo Nation and the City of Grants. Dwayne Yazzie, NNHRC Chair, said the “agreement demonstrates good effort that all Navajos will receive appropriate treatment as all citizens.” Grants Police representatives at the meeting called the agreement, “A new beginning ... we can help each other out with resources.” Positive as the agreement may be, Chairman Yazzie noted that the agreement is, “A living document as there are other issues we need to work on, such as Mount Taylor and the economy.” (<http://cibolabeacon.com/articles/2010/05/21/news/doc4bf6ad8180a0e591808305.txt>)

LEGAL CHALLENGE

No such agreement appears likely regarding the legal attack on the TCP designation. The lawsuit to overturn the designation on procedural grounds was filed in October 2009 by 13 named parties, including Rayellen Resources Inc., Destiny Capital Inc., Lynne Elkins, Paula D. Elkins, Joy Burns, Cebolleta Land Grant, Fernandez Company, Ltd., The Estate of James Williams, Orin Curtis Cleve Williams, Rio Grande Resources (U.S.) Ltd., Strathmore Resources (U.S.) Ltd., Laramide Resources (U.S.A.) Ltd., and Roca Honda Resources, LLC. All the individual plaintiffs are represented by one of two law firms that also represent the four uranium

Minerals Division (MMD) of the New Mexico Energy, Minerals and Natural Resources Department, Rio Grande Resources states: “The Mount Taylor Mine was put on inactive status by the prior owners, Chevron Resources Corporation, in January 1990 due to low uranium market prices. Rio Grande Resources Corporation acquired the Mine property in 1991, and waited for the market conditions to be favorable for startup. *Although some improvement in uranium price has occurred over the past five years, sufficient improvement is not expected for another four or five years. Should those changes in the market occur sooner, RGR stands ready to initiate steps to reactivate the mine.* In the meantime, RGR will continue

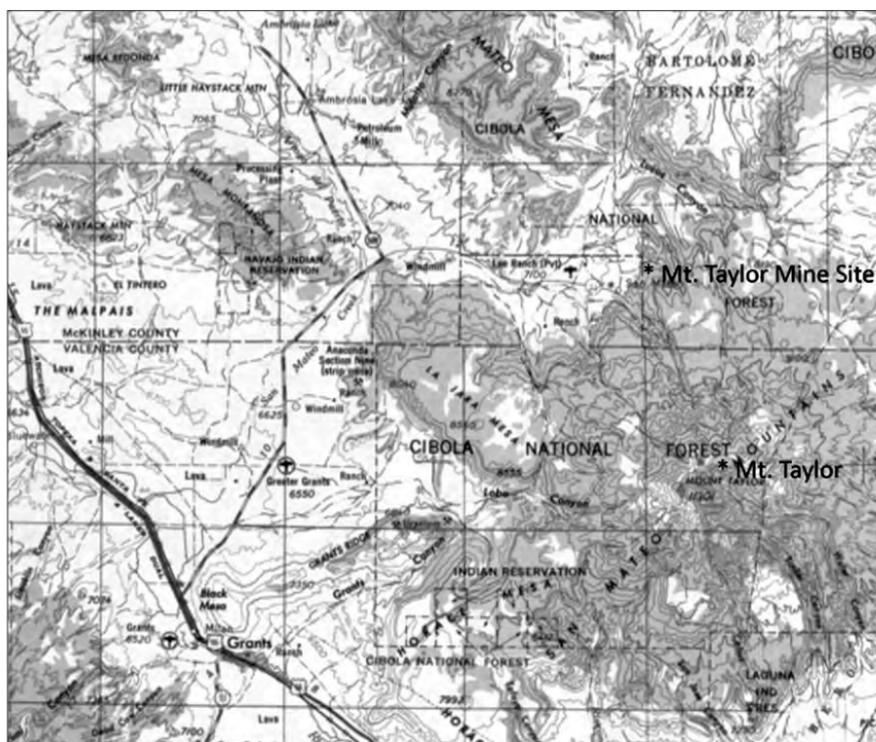
to accept proposals for a long-term water supply project (WSP) to allow portions of the mine facilities to be operational and employ a limited number of people.” (emphasis added.)

MOUNT TAYLOR MINE

Rio Grande Resources is taking other actions regarding the 100 million pounds of uranium that have been identified at the Mount Taylor mine, which includes includes a pair of already-constructed 3,400-foot deep mine shafts. (Editors Note: Rio Grande Resources is a 100%-owned affiliate of General Atomics (GA), owners of the Beverly uranium mine in South Australia, and the Cotter uranium mill and the Schwarzwald uranium mine in Colorado, among other nuclear facilities.) The mine borders the Mount Taylor TCP in the Cibola National Forest, and the orebody includes hundreds of acres within the TCP. The long-term damage to that area from the still unreclaimed roads and drill pads associated with exploration and development in the 1960s and 1970s is readily visible from the ground and on Google Earth images of the area (Latitude 35 20 20 N and Longitude 107 38 W).

The San Mateo Springs area near the mine site (and the basis for establishment of the San Mateo Springs Land Grant in 1818) has the largest concentration of perennial springs on Mount Taylor. Many of these springs are located in the National Forest in the TCP, in close proximity to the mine. These springs hold very strong cultural values for the Native Americans who revere Mount Taylor. The perceived risk to these and other springs in the area from renewed uranium development is a major concern for Tribal leaders and community advocates because of the legacy of cultural and environmental impacts of past uranium mining in the region.

The Mount Taylor mine operated from 1986 to 1989, when it was shutdown and allowed to flood. During construction and operation, the Mount Taylor mine produced as much as 8,000 gallons per minute of mine water (more than 12,000 acre-feet per year), which had to be removed from the mine to allow access to tunnels where the ore was extracted. In order to resume mining, the



Location map showing Mount Taylor and the Mount Taylor mine site and surrounding area.

companies. The TCP designation is being defended by legal counsel representing the CPRB and its chairman who were named as defendants in the lawsuit, the Pueblo of Acoma, and the National Trust for Historic Preservation.

The challenge to the TCP designation was filed in the New Mexico District Court located in Lea County, New Mexico (Case No. CV 2009-812, *Rayellen Resources et al. v. New Mexico Cultural Properties Review Board and Mac Watson*) in the far southeastern corner of the state, rather than in the District Court in Santa Fe where the decision was made. It should be noted that southeast New Mexico lacks significant Navajo or Pueblo populations, or the strong Native American cultural and historic legacy that is the focus of the TCP designation. Proceedings in the case likely will continue for at least several months.

While it is part of the challenge to the TCP, Rio Grande Resources also is undermining the TCP through requesting numerous permits for its Mount Taylor mine. In its mine permit application to the Mining and

water now flooding the mine (estimated at 145 million gallons) and additional water which would have to be removed for operations will need to be treated to meet applicable water quality standards. Two draft permits related to the quality of that water are currently under review, one by the New Mexico Environment Department (NMED) and the other by the U.S. Environmental Protection Agency (EPA).

GROUND WATER PERMIT

Ground water protection in New Mexico is provided through “discharge permits” issued by the NMED under regulations established by the NM Water Quality Control Commissions (WQCC). Rio Grande Resources applied for a discharge permit (DP-1712) to test technology to remove uranium from water in the mine to concentration levels below WQCC standards. Acoma Pueblo and the Multicultural Alliance for a Safe Environment (MASE) expressed concerns about the potential impact of Mount Taylor mine operations on water resources in the area and requested a hearing on that discharge plan. The discharge permit application for the mine water treatment test does not include a specific proposal to dewater the mine, but the link between the two was clearly noted in the evidence provided by Rio Grande Resources, NMED, and MASE.

The hearing on the discharge permit occurred on April 20 in Grants, NM, but as of July 29, 2010, no decision has been announced. At the hearing MASE presented technical testimony by Paul Robinson, Southwest Research and Information Center Research Director, providing findings and recommendations regarding a range of concerns about the proposed Rio Grande Resources operation. These concerns related to:

- water quality prior to mining at the mine site,
- proposed contingency plans and spill response materials,
- potential for treatment technology to remove of radium in mine water,
- lack of attention to variability in mine waters needing treatment,
- management of residues and sludges from uranium removal operations,
- the status of other discharge permits for the mine which has been on stand-by status for more than 15 years, and
- violations of state and federal environmental laws by General Atomics, Rio Grande Resources sister-subsiary.

The DP-1712 proceeding is one of the first times that the “bad actor” provision of the New Mexico Water Quality Act has been raised in a ground water discharge plan proceeding related to a uranium facility. Section 74-6-5.E(4)(e) of the Act provides that: “The constituent agency [New Mexico Environment Department] shall deny any application for a permit... if (4) the applicant has, within the ten years immediately preceding the date of submission of the permit application... (e) exhibited a history of willful disregard for environmental laws of any state or the United States.”

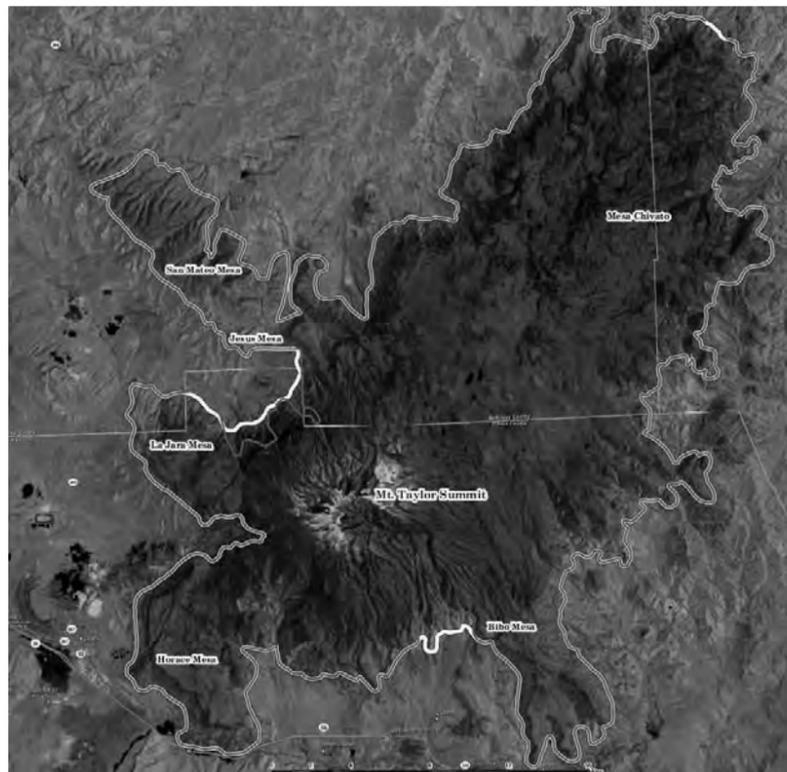
In its response to a motion by Rio Grande Resources to strike evidence in the proceeding about its affiliation with General Atomics (GA) and the environmental record of its affiliate Cotter Corporation, NMED asserted that based on General Atomics’ website:

GA acquired the Mount Taylor Mine — the primary asset of Rio Grande Resources — in 1991 and Cotter Corporation in 2000, both Rio Grande Resources and Cotter engage in uranium mining related activities and GA 100% owned affiliate Cotter Corporation has announced to Colorado uranium mill licensing agency, the Colorado Department of Public Health and Environment (CDPHE), that it intended to refurbish its uranium mill at Canon City, Colorado and take ore from the Mount Taylor mine when the mine resumes operation.

NMED and MASE submitted evidence of more than 90 Notices of Violation (NOV) issued by CDPHE at the Cotter Canon City mill since 2000, including more than 20 identified by CDPHE as “more serious.” During testimony, NMED staff stated that, while these records are relevant to the proceeding, the history of environmental violations did not appear to be “willful disregard of environmental laws.” Those NOVs do not include the environmental damage and health risks associated with the site’s listing on the National Priorities List since 1984 as a Superfund site.

SURFACE WATER PERMIT

Surface water protection in New Mexico is addressed through the federal Clean Water Act National Pollutant Discharge Elimination System (NPDES) permits. NPDES permits in New Mexico are issued by EPA Region 6 with certification of compliance with state standards by NMED.



Comparison of the Boundaries for the Mt. Taylor traditional cultural property, as defined by the Nominating Tribes and the U.S. Forest Service.

WHITE LINE = US Forest Service TCP Boundary
GREY LINE = Nominating Tribes TCP Boundary

The Mount Taylor mine is subject to an NPDES permit that has been renewed administratively every five years since the mine was first issued a permit in the early 1980s. Renewal of the existing permit was proposed by EPA in a May 28, 2009 public notice. A draft of the proposed NPDES permit and related factsheets are available at: www.epa.gov/region6/water/npdes/public_notices/nm/nmdraft.htm. EPA’s public notice provided a deadline of June 28, 2010 for public comment, but gave no timeframe for issuance of the renewed permit.

The NPDES permit will authorize releases to the environment at a designated “outfall” and set the numerical concentration limits for radionuclides, heavy metals, and other contaminants of concern.

The designated outfall in the proposed NPDES permit is a pipeline that stretches four miles north of the Mount Taylor mine site. That discharge point is outside the watershed of the San Mateo Creek where the mine site and the water to be discharged and treated originates. That discharge outside the basin was established in the 1970s so that the 12,000 acre-feet-per-year flow would not affect the Homestake uranium mill tailings Superfund site, which is some 20 miles downstream, by adding such large amounts of water containing uranium and other contaminants to the San Mateo Creek’s alluvial aquifer. (See *Voices from the Earth*, Spring 2010.)

WATER QUALITY STANDARDS

There is a complex relationship and interplay between the programs to protect ground water through the New Mexico Water Quality Act discharge permits

and programs to protect surface water through the federal Clean Water Act. This complexity is illustrated by considering controls of uranium and radium in the waters to be produced, treated and released by the Mount Taylor mine.

In the DP-1712 proceeding, Rio Grande Resources’ application identified the dissolved uranium content of the water in the mine as 0.0708–0.0710 mg/l (milligrams per liter), and the dissolved radium-226 content of the water in the mine as 16.8–19.5 pCi/l (picocuries per liter). The WQCC standards are 0.030 mg/l for dissolved uranium and 30 pCi/l for combined dissolved radium-226 and radium-228.

The mine water treatment technology proposed by Rio Grande Resources for DP-1712 is reported to be able to remove dissolved uranium to below 0.030 mg/l. Although the manufacturer reports that the proposed technology can also remove radium, the application did not address radium removal because the company maintains that no treatment is necessary to meet the WQCC standard.

The NPDES permit listed daily maximum and average monthly standards for uranium and radium, among other contaminants. The permit lists total uranium limits as 2.0 mg/l monthly average and 4.0 mg/l daily maximum, and dissolved radium-226 limits as 3.0 pCi/l monthly average and 10.0 pCi/l daily maximum. Therefore, the draft NPDES permit fails to require uranium removal sufficient to meet the current WQCC standards of 0.030 mg/l. On the other hand, the NPDES permit sets a stricter standard for dissolved radium-226 (3.0 pCi/l) than either the WQCC standard of 30 pCi/l for combined radium-226 and radium-228 or the radium content of the mine water of 16.8–19.5 pCi/l.

Thus, unless the limits in the proposed permits are changed, the NMED will require uranium removal, but not radium removal, to meet its ground water standards. Conversely, EPA would allow uranium in amounts that would far exceed the WQCC standards while requiring removal of radium in the mine water to levels that are lower than required to meet state’s standards.

Communities hope that the regulatory agencies will require removal of contaminants to the highest degree attainable, rather than having poorly coordinated regulatory systems allow releases of pollutants at levels higher than what is achievable with available technology.

— Paul Robinson

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Mt. Taylor TCP Hate Crime Investigation

• www.cibolabeacon.com/articles/2009/06/29/news/doc4a492b6d16ac6372997211.txt
• <http://bsnorrell.blogspot.com/2009/10/john-redhouse-hate-crimes-against.html>