



Ute Mountain Ute Tribe

Environmental Programs Department

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April 23, 2012

Rusty Lundberg
Director
Utah Division of Radiation Control
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VIA U.S. MAIL AND EMAIL

Re: Follow Up on Groundwater Issues; Denison Mines (USA) Corp. Radioactive Materials License Renewal DRC-045

Dear Mr. Lundberg:

Thank you for making time to meet with Ute Mountain Ute Tribal staff and attorneys during our recent visit to Salt Lake City. We were encouraged to see the level of State of Utah and DEQ attendance at the meetings, and we look forward to continued work and information sharing between the Tribe and the DEQ divisions. *See* attached Letter to Amanda Smith, April 23, 2012.

We thought it was important to write to you separately to provide you the Tribe's continued concerns with some of the groundwater contamination issues discussed at the staff-level meeting held after the main meeting on March 15, 2012. The Tribe anticipates these issues, as well as the other issues mentioned in the UMUT Comments (December 16, 2011), will continue to cause the Tribe concern until the DRC requires appropriate and timely action from Denison Mines (USA) Corp. ("DUSA") to respond to the Tribe's concerns.

1. Deep Water Supply Well WW-2

The Tribe has already included written comments to DRC regarding its concern with Deep Water Supply Well WW-2 serving as a contamination pathway to the Tribe's drinking water aquifer (the Navajo aquifer). *See* UMUT Comments (December 16, 2011), Section III(A)(3), page 11. At the March 15, 2012 staff-level meeting, DRC staff informed the Tribe that the WW-2 work had recently been resolved between DRC and DUSA. After that meeting, the Tribe reviewed DRC's February 13, 2012 letter to DUSA.



The Tribe is very concerned about DRC's February 13, 2012 action to use enforcement discretion to remove the requirements of Part I.H.3(a) of DUSA's groundwater permit to investigate the integrity of the well casing on WW-2. The Tribe has already justified its request for an implementation plan for periodic monitoring of the well casing by citing the well as a direct conduit to the Tribe's drinking water supply and to the communities of Bluff, Blanding, and Montezuma Creek. *See, e.g.*, Public Participation Summary Modification to Groundwater Quality Discharge Permit UGW370004, p. 13 (January 20, 2010). DRC has already "determined that because it is unknown if an annular seal exists in well WW-2, that active pumping of the supply well has the potential to draw contaminants from the shallow aquifer into the deep supply well." *Id.* at 14. DRC addressed the Tribe's concerns about WW-2 by adding Part I.H.3(a) to DUSA's groundwater permit and by "making the new requirements enforceable." *Id.* at 15. DRC has also justified its subsequent environmental analysis on groundwater issues at the White Mesa Mill by citing to the Part I.H.3(a) permit requirements. *See, e.g.*, Division of Radiation Control, Denison Mines (USA) Corp., Review of License Amendment Request and Environmental Report for Cell 4B, Safety Evaluation Report Under UAC R313-24 and UAC R317-6, p. 8-10 (April 6, 2010).

The Tribe's concerns about the integrity of the well casing on WW-2 (and the potential pathway to the Tribe's drinking water supply) have not changed since 2010. DRC has justified its choice not to use its enforcement authority against DUSA for DUSA's admitted "violation of Part I.H.3(a) of the Permit" because: (1) DRC alleges that WW-2 is upgradient of the tailings cells and the chloride and nitrate plume; (2) active well pumping will deliver contaminants back to the ground surface; and (3) WW-2 is regulated by the Division of Drinking Water ("DDW"). The first two explanations for the DRC's reversal were noted in the January 2010 Public Participation Summary that recognized the Tribe's concern over the casing and the risk to the deep aquifer as substantiated and guaranteed the well casing analysis in response to the Tribe's comments. The third explanation—that DDW regulates the well—does not remove the Tribe's concern about the integrity of the well casing. The Tribe asserts here that it is unlikely that DDW is evaluating the integrity of the well casing as a pathway to the Tribe's drinking water aquifer, and instead, DDW is likely only requiring an annual monitoring report for a limited list of water quality parameters that does not include many parameters (chloride, uranium, manganese, gross alpha, etc.) that would indicate leakage from the tailings cells. Accordingly, it appears to the Tribe that DRC had no basis to effectively remove the I.H.3(a) well casing provisions from DUSA's groundwater permit, and the Tribe asserts here that DRC should enforce DUSA's violation of Part I.H.3(a)¹ and that DRC must require DUSA to, at a minimum, immediately perform the well casing investigation work on WW-2.

¹ The Tribe notes here that, by refusing to find DUSA in violation of its groundwater permit for failing to complete the Part I.H.3(a) work, DRC continues to limit the Environmental Protection Agency's ability to make a sound business decision regarding delivery of alternative feed materials to the White Mesa Mill Facility. *See* UMUT Comments (Dec. 16, 2011), Section III(C)(3), p. 22.

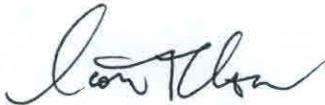
2. MW-22 Fourth Quarter Results (Increasingly Elevated Concentrations of Indicator Parameters)

The Tribe already included written comments regarding excessive levels of indicator parameters in MW-22. UMUT Comments (Dec. 16, 2011), Section III(A)(1)(a), page 6 and Exhibit C. These written comments and our discussion on March 15, 2012 emphasize that the Tribe is concerned about elevated levels of indicator parameters in wells near the southern border of the WMM facility because these wells are downgradient of the tailings cells and because these wells are the closest monitoring wells to the Tribal community at White Mesa. See UMUT Comments (Dec. 16, 2011), Exhibit C. In its comments, the Tribe demanded that DRC conduct a source identification of MW-20 and MW-22 and that DRC designate MW-20 and MW-22 as point of compliance wells. UMUT Comments (Dec. 16, 2011), Section III(A)(1)(a), page 9.

After our March 15, 2012 meeting, the Tribe received the fourth quarter results (sampled on October 11, 2011) for MW-22. These results show increasingly elevated concentrations of indicator parameters in the well, and the concentrations of beryllium, cadmium, manganese, molybdenum, and nickel all exceed the Utah ground water quality standards. This increases the Tribe's concern that contamination originating from the tailings cells is present in the groundwater at the southern boundary of the Mill's monitoring network. Accordingly, the Tribe reiterates its comments regarding MW-22 and re-emphasizes the importance of designating MW-20 and MW-22 as point of compliance wells.

The Tribe looks forward to continued communication regarding groundwater and other issues associated with the White Mesa Mill's license renewal and the operation of the White Mesa Mill facility.

Sincerely,



Scott Clow
Environmental Programs Director
Ute Mountain Ute Tribe

Cc: Gary Hayes, Chairman, Ute Mountain Ute Tribe
Peter Ortego, General Counsel, Ute Mountain Ute Tribe
Celene Hawkins, Associate General Counsel, Ute Mountain Ute Tribe
H. Michael Keller, Special Counsel, Ute Mountain Ute Tribe
Amanda Smith, UT Department of Environmental Quality
Bryce Bird, Director, UT Division of Air Quality