



*Because Water Matters*

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Via e-mail: [pubcomment-ees.enrd@doj.gov](mailto:pubcomment-ees.enrd@doj.gov)

October 6, 2014

Re: Proposed Consent Decree; United States and State of New Mexico v. Chevron Mining, Inc., (Action No. 14cv783 KBM-SCY) -- D.J. Ref. No. 90-11-2-07579

Dear Trustees:

On behalf of the Amigos Bravos Board of Directors and over 2,000 members, I write to express our concern that the Proposed Consent Decree; United States and State of New Mexico v. Chevron Mining, Inc.(CMI), does not adequately compensate for the harm that has been done to us, to the Red River, and to the communities that depend on the health of the Red River. Moreover, I write to formally state that Amigos Bravos and its members are being denied due process in this matter.

Amigos Bravos is a statewide river conservation and water protection organization. Our mission is to protect and restore the waters of New Mexico. We represent 2,000 members in our efforts to restore watershed health, hold polluters accountable and build a river protection movement for the future. Amigos Bravos is guided by social justice principles and dedicated to preserving and restoring the ecological and cultural integrity of New Mexico's water and the communities that depend on it. While rooted in science and the law, our work is inspired by the values and traditional knowledge of New Mexico's diverse Hispanic and Native American land-based populations, with whom we collaborate. Amigos Bravos formed in response to concern about impacts to the Rio Grande and the Red River from MolyCorp Inc., which is now CMI. Since 1988 we have advocated continuously for the restoration and protection of the Red River.

As previously stated in our September 25, 2014 letter to you requesting an extension of the comment period, Amigos Bravos was established in 1988 for the sole purpose of protecting and restoring the waters of New Mexico. Since the organization's inception 26 years ago, the protection and restoration of the Red River from impacts of historic and current mining operations has been a major focus of our work. Amigos Bravos has been a party of interest in all public regulatory proceedings regarding the Chevron Mining Inc.

(CMI) Questa molybdenum mine, including CERCLA, USEPA-issued Clean Water Act permits, New Mexico groundwater permits DP-933 and DP-1055, and the New Mexico Mining Act permit TA001RE.

In each regulatory proceeding Amigos Bravos has provided technical and legal expertise to represent the cultural, spiritual, fishing, farming and recreational interests of our members that have been harmed by CMI operations. Our focus has been to stop and mitigate resource damages to the aquatic and riparian habitats of the Red River.

Amigos Bravos first contacted the New Mexico Office of Natural Resources Trustee (ONRT) in 2002 and offered our assistance in the prosecution of resource damage claims caused by what was then known as the Molycorp Questa mine. Despite subsequent offers to provide expertise and resources, Amigos Bravos was never asked to participate in the development of this Consent Order.

The Consent Order released to the public on September 5<sup>th</sup> does not detail how the conclusions presented in the document were generated. There is no information on how the analysis to determine the extent and nature of the injuries was conducted. In addition there is no information about the methodologies that were used to determine fair compensation for injuries to natural resources attributable to the Chevron/Molycorp Mine. In order to review information not provided in the consent order itself Amigos Bravos filed an Inspection of Public Records Act (IPRA) request. On September 23, 2014, in response to the IPRA request, we received numerous Administrative Record documents -- all of which contained dense technical information that will need to be analyzed by our staff and consultants. On September 25, 2014 I sent a letter to you requesting an extension of the comment period. Unfortunately, our request for an extension of the comment period was ignored – it was neither acknowledged, denied nor granted. Consequently, we contend that Amigos Bravos and its members are being denied due process.

**We hereby renew our request for an extension of the comment period and, in order to inform the public, we request the opportunity for a public hearing or meeting on this Proposed Consent Decree.**

With regards to harm done by the mine to Amigos Bravos and its members, the historical evidence of hazardous waste spills, air emissions, and water contamination through spills and seeps is amply clear and repeatedly stated by State and Federal reports as well as by the mine's own data collection. Eight miles of the Red River have been considered biologically "dead" for decades. The once "blue ribbon" trout fishery has been decimated. Over 100 tailings spills have impacted wetlands, riparian areas and farm lands. Livestock in pastures adjacent and downstream of the tailings site have suffered from molybdenum toxicity. These health and resource impacts from the mine have not only been ongoing but are predicted to continue, albeit at reduced levels, for many decades to come. Members of Amigos Bravos depend on the health of the Red River for their farming, fishing and other sources of income, domestic water use, irrigation of croplands, family recreation, aesthetic pursuits, and spiritual well being.

Amigos Bravos supports the part of this Proposed Consent Decree that compensates for the loss of groundwater resources. However, we have major concerns regarding the \$1.5 million set aside for mitigating impacts to the aquatic habitat of the Red River. First, we have not seen a comprehensive analysis of **the evidence gathered by the Trustees to make a claim for damages to the aquatic habitat**. The \$1.5 million figure appears to be arbitrary and capricious. The Trustees' Proposed Restoration Alternatives is based on none of the direct damages caused by the mine or the benefits of restoration on the 15 miles of impacted Red River. The "Restoration Alternatives" chosen for analysis in determining the \$1.5 million figure are based entirely on six projects, only one of which will directly benefit the section of river that has been most impacted by the mine – none of the projects enhance water quantity, water quality or the impacted riparian habitat. The basis for determining the restoration of resource damages on the Red River has nothing to do with compensating those animals, plants and people harmed by the mining operation.

For these reasons, Amigos Bravos requests that prior to approving the Proposed Consent Decree the Court order the Trustees to:

1. Hold a Public Hearing to provide the impacted public with the evidence and analysis that went into establishing the \$1.5 million settlement figure for habitat restoration. As well as to gather evidence from the impacted community regarding resource damages caused by the mine and recommendations for mitigating those damages.
2. Reevaluate damages to water quantity, water quality, riparian habitat, recreational activities and domestic water uses in response to additional information gathered through the public participation process.
3. Recalculate the settlement monetary value of aquatic and riparian resource damages based on public input and the costs of future restoration efforts for projects that will benefit the communities most impacted by those resource damages caused by the mine to the Red River.
4. Enter into new negotiations with CMI based on evidence gathered from the public participation process.

By requiring these steps, the Court will provide Amigos Bravos with the opportunity to address restitution for harm done to our members, as well as ensure that our members are afforded due process.

Thank you for taking our concerns into account.

Respectfully submitted by:



Brian Shields  
Executive Director  
Amigos Bravos