

**STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
THIRD JUDICIAL DISTRICT COURT**

FILED
2016 FEB 10 PM 4:06

DISTRICT COURT
DOÑA ANA COUNTY, NM
JUDICIAL DISTRICT NO. 3

**State of New Mexico *ex rel.*
Office of the New Mexico State Engineer,
Plaintiff,**

No. CV 96-888
Hon. James J. Wechsler

Lower Rio Grande

v.

Outlying Areas Section

**Elephant Butte Irrigation District, *et al.*,
Defendants.**

Copper Flat Expedited *Inter Se*

Subfile No. LRO-28-008-9009
Case No. 307-OA-9703126
New Mexico Copper Corporation

Subfile No. LRO-28-008-9010
Case No. 307-OA-9702236
William J. Frost
Case No. 307-OA-9702237
Harris Gray

State of New Mexico's Witness and Exhibit List

NOW COMES the State of New Mexico and hereby provides its witness and exhibit list for the trial of this matter, currently set to begin on March 14, 2016.

The State will call as its witnesses Cheryl Thacker and James Hangen, both of Las Cruces, New Mexico. They will be called both as lay and expert witnesses. The State reserves the right to call any witness named as a witness by any other party to this action.

The State discloses the following exhibits, copies of which are supplied with this pleading:

- 1) Memorandum from Cheryl Thacker to Andrea Mendoza dated August 2, 2012, evaluating Declarations LRG-4652 through LRG 4652-S-17;
- 2) Excerpt from "The Natural Defenses of Copper Flat" by J. Steven Raugust;
- 3) "Water Consumption at Copper Mines in Arizona" by Dr. Madan M. Singh;

2/10/16

- 4) "Water Use and Water Conservation by the Copper Mining Industry" by Griffin, Martin and Wade;
- 5) Copper Flat Partnership Field Check Report by Ted Reyes, September 13, 1984;
- 6) Mesilla Valley Administrative Area Guidelines for Review of Water Right Applications, January 5, 1999;
- 7) Original Hydrographic Survey page for LRO-28-008-9009;
- 8) Field Report of Sheryl Smith dated April 17, 2008;
- 9) Price of Copper over Time
- 10) Answer to General Adjudication Complaint of Hydro Resources Corporation, February 13, 2008;
- 11) Offer of Judgment to William J. Frost and Harris Gray, July 29, 2014;
- 12) Offer of Judgment to New Mexico Copper Corporation, July 29, 2014;
- 13) Special Warranty Deed from Hydro Resources to NM Copper Corporation, dated May 10, 2011;
- 14) Memorandum from P. Weyler to J. Humphrey date February 16, 1984;
- 15) Evidence of Intent Report by Turney Engineering, dated September, 2013;
- 16) Plan of Operation memorandum from John King to BLM, transmitted January 31, 1991.

The State further discloses the following Exhibits, which, to save paper, are not attached, but which are already in the possession of each party to this action as deposition exhibits as follows:¹

Deposition of Cheryl Thacker – April 20, 2015
Exhibit No.

¹ Some of these documents may duplicate listed and attached documents.

- 1 Application for Permit to Repair and/or Deepen Well
- 2 Letter w/attachments: dated 8/16/2012 – to: Andrew Feltman, NMCC – from: Cheryl
 Thacker; Evaluation of Declarations
- 3 Declarations of Owner of Underground Water Rights, dated 1984, with accompanying
 documents
- 4 Letter w/attachments: dated 9/18/1984 – from: J. B. Nixon - Declarations of Owner of
 Underground Water Right
- 5 Amendment to Declarations of Ownership of Underground Water Right: dated
 9/24/2010, with accompanying documents
- 6 Group of Emails with attachments: dated: 7/6/2012 through 9/11/2012 – between: Jens
 Deichmann / Cheryl Thacker
- 7 Resume of Cheryl Thacker
- 8 Memorandum OSE District IV – dated 9/18/2012 – to: Jonathan Sperber, Admin.
 Litigation Unit – from: Cheryl Thacker, LRG Basin Supervisor; Subject:
 Application for Permit to Add Supplemental Points of Diversion to Supplement
 Ground or Surface Water

Deposition of James Hangen – April 21, 2015

Exhibit No.

- 10 Spreadsheet
- 11 Draft Environmental Impact Statement for Copper Flat Mine Public Meetings (2012)
- 12 Qualifications – James E. Hangen
- 13 LRG Hydrographic Survey Change Request Form: dated 2/14/14 – Tanya Scott

Deposition of Thomas C. Turney – September 22, 2015

Exhibit No.

- 15 Curriculum Vitae – Thomas C. Turney
- 16 Title: NMCC_rspTRP, Turnery Review
- 17 State of NM, Office of the State Engineer, Comments of Thomas C. Turney before United
 States Senate Committee of Energy and Natural Resources Field Hearing on
 Water Issues NM State University Corbett Center Las Cruces, NM –
 August 14, 2001
- 18 Statement of Claims Under Subfile Numbers LRO-28-008-9009 and LRO-28-008-9010
- 19 Evidence of Intent to Develop and Use Water for Mining Purposes as Demonstrated by
 the Plan for Development, Completion of Mining Infrastructure, and Actual Use
 of Water – Copper Flat; Prepared for THEMAC Resources by Turnery Engineering
 and Design – Amended June 26, 2015
- 20 Email w/attachment: dated 8/23/13 (12:03 pm) – to: Jeffrey Smith – from: Tom Turney
- 21 DVD/CD – Cooper Price 1850-2015; CoFlatProject Pres SME 1983; Definitive Feasibility
 Study Copper 11/21/2013; Draft BLM EIS 1996; Environmental Assessment
 Record – Quintana; Feasibility Rpt Quintana 1980-1; Feasibility Review Winkler

- Quintana 1980–1; Original Plan of Dev. Draft 8-28-13; Preliminary Rpt Huston 1964; Themac Tech Rpt (NI 43-101)
- 23 Memorandum: dated 8/2/2012 – to: Andrea J. Mendoza, Dist. IV WRAP Mgr. – from: Cheryl S. Thacker, LRG Basin Supervisor
- 24 Water Distribution System Combined Water Schematic

Deposition of Jeff Smith – September 23, 2015

Exhibit No:

- 26 Jeffrey Smith, P.E. Curriculum Vitae
- 27 Quintana Minerals Corporation Hillsboro – Copper Flat Project New Mexico Water Supply System Plan and Hydraulic Profile map with graph
- 28 Quintana Minerals Corporation Hillsboro – Copper Flat Project New Mexico Water Distribution System Combined Water Schematic
- 29 Aerial Photo of the Copper Flat Mine in 1982
- 30 Themac Technical Report
- 31 Themac Mine Maps – Regional Well Location Map Plate #1 and zoom views
- 32 Field Check Report done on September 13, 1984 by Ted Reyes
- 33 Prefeasibility Study dated August 22, 2012
- 34 Memo dated April 11, 2013 to: Jens Deichmann from: Jeff Smith with attachments re: Copper Flat Water Supply Quintana Minerals Co. Main Fresh Water System Feasibility Study with Effective Date: October 7, 2013; Issue Date: November 21, 2013
- 35 Letter: dated 4/22/10 – to: Mark K. Adams, Esq. Rodey Law Firm – from: John W. Shoemaker, Ph.D.
- 36
- 37 Map of mine site
- 38 E-mail dated February 14, 2014 to: Steve Raugust – from: Katie Emmer re: JSAI Capacity Memo
- 39 Draft Environmental Impact Statement dated May 2015

Deposition of Harris Gray – September 24, 2015

Exhibit No.

- 44 Attachment A
- 45 Letter: dated 3/26/1987 – to: Dave Norquay, Canadian Imperial Bank of Commerce – from: Harris
- 46 Letter: dated 4/13/1987 – to: William Frost – from: Clifford K. Atkinson, Modrall Law Firm
- 47 Bill of Sale
- 48 Quitclaim Deed
- 49 Application for Permit to Change Location of Wells and Place and Purpose of Use of Underground Waters (Copper Flat Partnership)
- 50 Letter: dated 4/1/1987 – to: John Nixon, State Engineer – from: Harris Gray
- 51 Letter: dated 4/3/1987 – to: Harris Gray – from: J.B. Nixon

- 52 Letter: dated 6/4/1987 – to: Harris Gray – from: S.E. Reynolds, State Engineer
 53 WITHDRAWN: Application to Change Point of Diversion and Place and/or Purpose of Use
 from Ground Water to Surface
- 54 Letter: dated 10/24/1988 – to: Harris Gray – from D.N. Stone, Chief Water Rights Div.
 55 Agreement: dated 2/10/1989 between Harris Gray and Bill Frost
- 56 Letter: dated 1/4/1991 – to: Harris Gray and William J. Frost – from: Michael F. LaFleur,
 Chairman and Chief Executive Officer – Gold Express Corporation
- 57 Letter: dated 1/7/1991 – to: State Engineer Office (Las Cruces) – from: Atty. J. Wayne
 Woodbury
- 58 Water Rights Offering - LRG-4652 *et al.* – Owners: William Frost – Harris Gray –
 Completed by: Law & Resource Planning Associates, P.C.
- 59 Letter: dated 5/8/2008 – to: L. Michael Messina, Esq. – from: Charles DuMars, LRPA –
 Re: Frost and Gray Water Rights
- 60 Option and Purchase Agreement: dated 9/9/2010 – between Frost/Gray and NMCC
 61 Handwritten Notes re: Timeline from 1997 through 2015; “Gray Frost Water Rights
 Copper Flat” – Timeline 1986 through 1996

Video Deposition of Robert Pratt – October 15, 2015

Exhibit No:

- 62 Resume of Robert N. Pratt
- 63 Copper Flat Project Overview
- 64 Alta Gold Co. Copper Flat Project Hillsboro, New Mexico
- 65 Photograph of interior of building
- 66 Letter: dated January 4, 1991 – to: Harris Gray and William J. Frost – from: Michael F.
 LaFleur, Gold Express Corporation – re: Letter Agreement – Settlement of
 Hillsboro/ Copper Flat Water Rights Dispute
- 67 Affirmation and Confirmation Agreement
- 68 Woodward-Clyde report
- 69 Copper Flat EIS Schedule Revised April 10, 1996
- 70 Weyher Brothers Company document
- 71 Bankruptcy Auction Bid Packet
- 72 Kennecott Nevada Mines Division excerpt from UtahRails.net
- 73 Letter: dated 9/21/1993 – to: Marcy Leavitt, Acting Bureau Chief Ground Water
 Bureau, NMED – from: Robert N. Pratt, Alta Gold Co.
- 74 Letter: dated 6/2/1994 – to: Robert N. Pratt, Alta Gold Co. – from: Gold Express
 Corporation
- 75 Expert Rebuttal Report, James R. Kuipers, P.E. dated October 2, 2015
- 76 Memo: dated 1/31/1994 – to: Val Antczak and David Deisley – from: Bob Prescott –
 Re: Copper Flat Well Drawdown and Water Rights
- 77 Letter: dated 9/27/1996 – to: Bob Pratt, Alta Gold Company – from: Tim De Young,
 Modrall, Sperling, Roehl, Harris & Sisk, P.A. – re: Elephant Butte Irrigation
 District v. Reynolds, et al.

- 78 Letter: dated 3/6/1998 – to: Robert N. Pratt, Alta Gold Company – from: Tim De Young, Modrall, Sperling, Roehl, Harris & Sisk, P.A. – re: Copper Flat: Lower Rio Grande Water Rights Adjudication Status
- 79 Letter: dated 10/3/1994 – to: Jack Hammond, Conrad G. Keyes, Gary Esslinger and Tom Bahr – from: Tim De Young, Modrall, Sperling, Roehl, Harris & Sisk, P.A. – re: Meeting with Alta Gold Company Representatives
- 80 Draft Environmental Impact Statement Copper Flat Project dated February 1996

Deposition of James R. Kuipers, P.E.– October 20, 2015

Exhibit No:

- 90 List of all professional publications and presentations and all cases in which James R. Kuipers has been accepted as an expert
- 91 Predicting Water Quality at Hardrock Mines – Methods and Models, Uncertainties, State-of-the-Art
- 92 Characterizing, Predicting, and Modeling Water from Mine Sites. Presented May 18-21, 2009, in Sacramento, California
- 93 Technical Report on Underground Hard-Rock Mining: Subsidence and Hydrologic Environmental Impacts. By Steve Blodgett, M.S. and James R. Kuipers, P.E. February 2002
- 95 E-mails from May 14, 2015 – October 14, 2015
- 96 Expert Rebuttal Report, James R. Kuipers, PE. October 2, 2015
- 97 Expert Rebuttal Report, James R. Kuipers, PE. October 2, 2015
- 98 Gold Express Corporation document dated February 12, 1993- to: Messrs. Tim Murphy/ Tim Sanders – from: John R. King/Milton W. Hood re: Response to NMED Surface Water Bureau Comments Jim Piatt and Bob Slater
- 99 Environmental and Water Quality Issues article by James R. Kuipers, PE. Chapter Two: The Environmental Legacy of Mining in New Mexico

Deposition of John W. Shomaker, Ph.D. – October 27, 2015

Exhibit No:

- 102 Table 4: Summary of Primary Production and Initial Exploratory Wells;
Table 5: Summary of Other Wells of Historical Use
- 103 Letter: dated 11/5/1982 – to: Milt Hood, Quintana Minerals Corporation – from: Bob Donegan
- 104 Letter w/attachments: dated 11/24/1982 – to: Bob Donegan, VP - Quintana Minerals Corp. – from: Fred Pena, Resident Manager.
- 105 Letter: dated 1/12/1983 – to: Bob Donegan, Quintana Minerals Corp. – from: John W. Shomaker
- 106 Letter: dated 7/25/1983 – to: Fred Knackstedt, Quintana Minerals Corp. – from: John W. Shomaker
- 107 Letter: dated 8/3/1983 – to: John W. Shomaker, Consulting Geologist – from: F. W. Knackstedt Admin. Mrg., Quintana Minerals Corp.

- 108 Letter w/attachment: dated 9/7/1983 – to: F. W. Knackstedt, Admin. Mgr. – from: John W. Shomaker
- 109 Letter: dated 10/18/1983 – to: John W. Shomaker – from: Paul A. Weyler, Mill Superintendent, Quintana Minerals Corp.
- 110 Letter w/attachments: dated 11/9/1983 – to: F. W. Knackstedt, Admin Mgr. – from: John W. Shomaker
- 111 Interoffice Correspondence: dated 2/16/1984 – to: P. Weyler – from: J. Humphrey
- 112 Method of Water Usage Calculation for Primary Production Well Field Water Usage Base on June, 1982 Water Consumption
- 113 Photos (13)
- 114 Letter: dated 2/19/1986 – to: John W. Shomaker – from Clifford K. Atkinson, Modrall Law Firm
- 115 Letter w/attachments: dated 4/10/1986 – to: John Shomaker – from: Clifford K. Atkinson, Modrall Law Firm
- 116 Letter: dated 5/9/1986 – to: Lee Peters, Associate Counsel, Comm. of Public Lands – from: John W. Shomaker
- 117 THEMAC Resources; Copper Flat Project – Form 43-101F1 Technical Report
- 118 Letter: dated 4/22/2010 – to: Mark K. Adams, Rodey Law Firm – from: John Shomaker
- 119 Technical Memorandum – dated 4/14/2011 – from: Roger Peery, Sr. Hydrogeologist –
- 120 THEMAC Resources – to: Jens Deichmann, NMCC; cc: John Shomaker, Ed Fidler, NMCC, Annie McCoy, JSAI – from: Steve Raugust, NMCC
- 121 Draft Technical Memorandum: dated 4/11/2013 – to: Steve Raugust, Resource Dev. Mgr, MAC Resources – from: Steven T. Finch, Jr., Principal hydrogeologist-Geochemist
- 122 Technical Memorandum – dated 5/15/2015 – to: Steve Raugust – from: Steven T. Finch, Jr.

The State further reserves the right to offer any Exhibits designated by other parties.

The State hereby designates the following portions of the following depositions to be used at trial if the deponents are not called in person or are otherwise unavailable:

- 1) Deposition of Robert Pratt, pp. 175-201;
- 2) Deposition of John Shomaker, pp. 147-156;
- 3) Deposition of Thomas C. Turney, pp. 218-29;
- 4) Deposition of Jeff Smith, pp. 176-96; and
- 5) Deposition of Harris Gray, pp. 45-48.

Respectfully submitted,

By:  _____

Richard A. Allen
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Certificate of Service

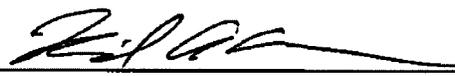
I hereby certify that a copy of this Designation of Witnesses and Exhibits was served, by first class mail, on

Tanya L. Scott
Charles T. DuMars
Law & Resource Planning Associates, PC
Albuquerque Plaza
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Albuquerque, NM 87102
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Melody K. Sears, *et al.*

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P.O. Box 2240
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Attorney for Turner Ranch Properties, LP

This 10th day of February, 2016.

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Richard A. Allen