

1 **BEFORE THE WATER QUALITY APPEALS BOARD**

2
3 TOWN OF FLORENCE; SWVP-GTIS MR,
4 LLC; and PULTE HOME CORPORATION,

5 Appellants,

6 v.

7
8 ARIZONA DEPARTMENT OF
9 ENVIRONMENTAL QUALITY

10 Respondent.

11 FLORENCE COPPER INC.,

12 Intervenor.
13

Case No. 16-002-WQAB

**TEMPORARY ACQUIFER PROTECTION
PERMIT NO. P-106360
SIGNIFICANT AMENDMENT**

BOARD PROCEDURAL ORDER

14
15 On or about March 6, 2012, Curis Resources (Arizona) Inc. ("Curis") filed an
16 application for a Temporary Individual Aquifer Protection Permit ("APP") with the
17 Arizona Department of Environmental Quality ("Department") for a production test
18 facility at Florence, Arizona to develop data for an APP application for a full-scale in situ
19 leach copper/in-situ copper recovery commercial mine. Following final review, on July
20 13, 2013, the Department issued Temporary APP No. P-106360 Other Amendment (the
21 "2013 Temporary APP") for the facility. On or about August 2, 2013, the Town of
22 Florence (the "Town"), SWVP-GTIS MR, LLC ("SWVP"), Johnson Utilities, LLC
23 ("Johnson") and Pulte Home Corporation ("Pulte") filed an Amended Notice of Appeal
24 (the "2013 Appeal") with the Water Quality Appeals Board (the "Board") to appeal the
25 Department's issuance of the 2013 Temporary APP to Curis. The Board referred the
26 2013 Appeal to the Office of Administrative Hearings ("OAH") for an evidentiary hearing.
27 Curis subsequently became Florence Copper Inc. ("FCI"). OAH held 34 days of hearing
28 in April and May 2014. On September 20, 2014, the Administrative Law Judge ("ALJ")
29 issued her Decision (the "2014 ALJ Decision"). The 2014 ALJ Decision upheld most of
30 the Temporary APP, while overturning five items in the Temporary APP identified in the
following Sections of the Conclusions of Law of the 2014 ALJ Decision:

§ 3.6 (BHP Report);

1 § 3.7.3.2.1 (Monitoring);
2 § 3.7.3.3 (Monitoring);
3 § 3.8 (PMA and POCs); and
4 § 3.9.4 (Closure Reporting).

5 On November 10, 2014, the Board considered the 2014 ALJ Decision. On
6 November 14, 2014, the Board issued its Order (the "2014 Board Order") adopting all
7 419 Findings of Fact of the 2014 ALJ Decision, and 72 of the 73 Conclusions of Law
8 ("COL") of the 2014 ALJ Decision, as its own, and remanding the matter to the
9 Department for further proceedings.

10 On January 15, 2015, the Department instructed FCI to prepare and submit an
11 Application for Significant Amendment to the Temporary APP. Following FCI's
12 submission of additional materials and a public comment process, the Department on
13 August 3, 2016 issued a Significant Amendment to the Temporary APP (the "2016
14 Significant Amendment"). On September 1, 2016, the Town, SVWP and Pulte filed a
15 Notice of Appeal (the "2016 Appeal") of the Significant Amendment with the Board. FCI
16 was subsequently granted intervention in the 2016 Appeal.

17 The matter came before the Arizona Water Quality Appeals Board at its meeting
18 on December 14, 2016 for discussion of procedural matters regarding the processing of
19 the 2016 Appeal. The Town, SWVP, the Department and FCI appeared through
20 counsel. The Board and the parties discussed procedural matters.

21 IT IS THEREFORE ORDERED that the Board will permit additional written
22 testimony, limited legal arguments and may hold a hearing for the development of an
23 additional factual record on the issues identified in the following Sections of the
24 Conclusions of Law of the 2014 ALJ Decision:

25 § 3.8 (PMA and POC),
26 § 3.7.3.2.1 (Monitoring), and
27 § 3.7.3.3 (Monitoring)
28 (collectively, the "Hearing Issues").

29 IT IS FURTHER ORDERED that no later than January 31, 2017, the parties shall
30 simultaneously file sworn affidavits of qualified experts on the Hearing Issues and

1 setting forth the expert's qualifications. Each side shall file affidavits of no more than
2 one expert on each of the three Hearing Issues.

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4 IT IS FURTHER ORDERED that no later than February 14, 2017, the parties
5 may file sworn affidavits of qualified experts in response to the affidavits previously filed
6 by opposing parties. Each side shall file responsive affidavits of no more than one
7 expert on each of the three Hearing Issues.

8 IT IS FURTHER ORDERED that no later than February 14, 2017, the parties
9 may file legal briefs of no more than 10 pages per party.

10 IT IS FURTHER ORDERED that all filings made pursuant to this Procedural
11 Order shall be electronically submitted to the Clerk of the Board and to the other
12 parties, and parties shall also provide three (3) paper copies of all such filings to the
13 Clerk of the Board.

14 IT IS FURTHER ORDERED that the Board shall schedule a meeting no earlier
15 than March 1, 2017, at which the Board (i) may decide the appeal without further
16 evidence or testimony, or (ii) decide the matter after hearing from the experts providing
17 affidavits in response to this Procedural Order who shall be made available for possible
18 cross examination by the Board. The party sponsoring the expert may ask further
19 questions of its experts but the questioning shall be strictly limited to clarifying any oral
20 testimony given by the party's expert in response to questions from the Board. The
21 Board also reserves the right to discuss and vote to request additional information,
22 testimony, evidence or legal arguments subsequent to the hearing.

23 IT IS FURTHER ORDERED that pursuant to the stipulation of the parties at the
24 Board's December 14, 2016 meeting, each of the parties have waived their rights under
25 the applicable rules, including but not limited to A.A.C. R2-17-121 to cross-examine the
26 experts providing affidavits on behalf of other parties, any hereby agree to the process
27 discussed at the December 14, 2016 meeting and provided for in this Procedural Order.

28 IT IS FURTHER ORDERED that FCI shall arrange for a court reporter at the r
29 hearing, with the costs to be shared between the Appellants, Department and FCI
30 pursuant to their stipulation at the Board's December 14, 2016 meeting.

1 IT IS FURTHER ORDERED that pursuant to the stipulation of all parties at the
2 Board's December 14, 2016 meeting, within 10 days of the date of this Procedural
3 Order each party shall file with the Board a document indicating its consent to the
4 procedure set forth herein.
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8 DATED this 19th day of December, 2016.

9 WATER QUALITY APPEALS BOARD

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13 Scott Wakefield, Chair
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18 **A copy of the foregoing was mailed via electronic mail**
19 **and certified U.S. Mail**
20 **Return Receipt Requested,**
21 **this 19th day of December, 2016**

22 Jeffrey D. Cantrell, Assistant Attorney General
23 Rick Zeise, Assistant Attorney General
24 Bradley R. Pollock, Assistant Attorney General
25 Office of the Attorney General
26 1275 W. Washington
27 Phoenix, Arizona 85007
28 *Attorneys for Arizona Department of Environmental Quality*

29 D. Lee Decker
30 Bradley J. Glass
Gallagher & Kennedy, P.A.
2575 East Camelback Road
Phoenix, Arizona 85016-9225
Attorneys for Florence Copper Inc.


1 D. Christopher Ward
2 Pulte Home Corporation
3 16767 North Perimeter Drive; Suite 100
4 Scottsdale, Arizona 85260
5 *Attorneys for Appellant Pulte Home Corporation*

6 Jorge Franco, Jr.
7 Ronnie P. Hawks
8 Russell R. Yurk
9 Jennings, Haug & Cunningham, L.L.P.
10 2800 North Central Avenue; Suite 1800
11 Phoenix, Arizona 85004-1049
12 *Attorneys for Appellant SWVP-GTIS MR, LLC*

13 Christopher Kramer
14 Barbara U. Rodriguez-Pashkowski
15 Gust Rosenfeld P.L.C.
16 One East Washington; Suite 1600
17 Phoenix, Arizona 85004
18 *Attorneys for the Town of Florence*

19 **A copy of the foregoing was mailed via inter-agency mail**
20 **this 19th day of December, 2016**

21 Joseph Sciarrotta, Jr.
22 Senior Counsel
23 Arizona Attorney General's Office
24 1275 West Washington
25 Phoenix, Arizona 85007

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27 _____
28 By: Connie N. Castillo
29 Board Clerk
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