

**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION**

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Constituent Agencies

Environment Department
Office of State Engineer
Game and Fish Department
Oil Conservation Division
Department of Agriculture
Department of Health
State Parks Division
Soil and Water Conservation Commission
Bureau of Geology and Mineral Resources
Municipal/County Representative
Members-at Large

New Mexico Water Quality Control Commission Meeting

July 7-8, 2008

10:00 a.m. July 7; 9:00 a.m. July 8, 2008

New Mexico State Capitol Building

Room 317

490 Old Santa Fe Trail

Santa Fe, New Mexico 87501

MEMBERS PRESENT:

Cheryl Bada	State Parks Division
Greg Lewis	Office of the State Engineer
Larry Dominguez	Department of Agriculture
*Len Flowers	Department of Health
Peggy Johnson	Bureau of Geology and Mineral Resources
Steve Glass	City of Albuquerque – Municipal/County Representative
*Howard Hutchinson	Soil and Water Conservation Commission
Mike Sloane	Department of Game & Fish
Glenn Von Gonten	Oil Conservation Division
Maxine Goad	Member-at-Large
Edward Vigil	Member-at-Large
Jim Norton	NMED/EPD, in lieu of Jon Goldstein

MEMBERS ABSENT:

Jon Goldstein NMED/Deputy Secretary

*Ms. Flowers was present on July 7 for agenda items 1-5 and was absent for agenda items 6-9.

*Mr. Hutchinson was absent on Monday, July 7 and was present Tuesday July 8.

OTHERS PRESENT:

Sally Malave, Asst. Atty. General	Charles de Saillan, NMED/OGC
Louis W. Rose, LES	Bill Olson, NMED/GWB
John Hernandez, EBID	Tannis Fox, NMED/OGC
Stuart Butzier, Modrall Law Firm	John Kelly, Modrall Law Firm
Charles Nylander, Watermatters, LLC	Kevin Myers, NMED/GWB
Bruce Frederick, NMELC	Charles Lakins, Domenici Law Firm
Dal Moellenberg, Gallagher Law Firm	Jerry Shoepner, NMED
Adam Rankin	Regina Romero, NM Municipal League
Kathryn Becker, NMED/OGC	Dora Wang, NMED/OGC
Rosemary Othmer, NMED/OGC	Larry Shore, NMED
Sheila Deehy, Freeport McMoRan	Joseph Fox, NMED
Cindy Ardito	Tim Eastep, Chino Mine
Lynn Lande, Chino Mine	Karen Gallegos, NMED
Zachary Shandler, Atty.General's Office	Joyce Medina, NMED/OOTS

The meeting was called to order by Mr. Norton at 9:40 a.m.

Item 1. Roll Call:

The Commission administrator took roll and noted a quorum was present.

Item 2. Approval of Agenda

The Chair asked if there were any changes the Commission wished to make in the Agenda.

Action: Mr. Sloane moved to approve the agenda. Mr. Glass seconded. The motion passed unanimously.

Item 3. Approval of March 11, 2008 meeting minutes.

Mr. Sloane moved to approve the meeting minutes. Mr. Dominguez seconded. The motion passed. Ms. Goad abstained.

Item 4. Request for postponement of hearing and request for new hearing date in re: Utility Operator Certification Rulemaking, WQCC 07-09 (R). Regina Romero, NM Municipal League; Misty Braswell, NMED/OGC.

Ms. Romero asked the Commission to reset the hearing in this matter on its October 14, 2008 agenda.

Action: Mr. Glass moved to approve the hearing setting in WQCC 07-09 (R) on the Commission's October 14, 2008 agenda. Mr. Dominguez seconded. The motion passed unanimously.

Item 5. Hearing request in re: Verified Appeal Petition by ParaSol Dairy regarding denial of Application for Discharge Permit DP-1641, WQCC 08-05 (A). Charles Lakins, Esq., for ParaSol Dairy; Misty Braswell, NMED/OGC.

There was discussion regarding the focus of the appeal petition as well as the issues to be considered if the Commission remanded the matter back to the Department.

Mr. Lakins noted that ParaSol did not wish to have the Commission set a hearing date today but allow the parties to coordinate a time agreeable to all to reopen the hearing and take additional evidence. He further stated that the reopened hearing would be limited in its scope.

Ms. Braswell mentioned that Elephant Butte Irrigation District (EBID) had filed a Motion to Intervene in this case and the Department agreed that the Irrigation District should be included in the hearing and should be allowed to present its technical testimony. Additionally, she stated that NMED concurred with the Petitioner with respect to the parties coordinating a date for the hearing to be reopened.

Mr. Glass asked Mr. Lakins if the Petitioner agreed with NMED's position relating to EBID. Mr. Lakins stated that the Petitioner agreed with the Department.

Action: Mr. Glass moved that the Commission grant the request to remand to take additional evidence. Mr. Sloane seconded.

John Hernandez, representing EBID, stated that the Irrigation District would strongly favor a completely new hearing in this case. Mr. Hansen from the Bureau of Reclamation (BOR) stated that the Bureau also favored a new hearing.

Ms. Braswell and Mr. Lakins both stated that they were opposed to anything more than the reopening of the hearing on a limited basis. Both Ms. Braswell and Mr. Lakins stated that EBID and the BOR would be allowed to present evidence at a reconvened hearing and also that there would be considerable time allotted for public comment.

There was a lengthy discussion regarding what limitations would be in place and what the impact of those limitations would be if the remanded hearing was of limited scope.

The Chair asked Mr. Glass to set out the specific issues before the Commission and the ramifications of Commission decisions with respect to those issues. A discussion followed.

Mr. Glass withdrew his earlier motion from consideration by the Commission.

Action: Mr. Glass moved that the Elephant Butte Irrigation District's motion to intervene be granted. Ms. Johnson seconded. The motion passed unanimously.

Action: Mr. Sloane moved that the Commission adopt the proposal for remand on a limited basis and that Felicia Orth act as Hearing Officer and further that Ms. Orth set out the scheduling issues in this matter. Mr. Glass seconded.

There was a lengthy discussion relating to Mr. Sloane's motion and its ramifications.

Following the discussion,

Mr. Sloane added the following text to his motion:

The limited scope shall be further refined by the Hearing Officer through discussions with the parties and the development of the scheduling order. Mr. Glass seconded the addition to the motion.

The motion passed unanimously.

Item 6. Oral arguments, deliberations and possible decision in re: Phelps Dodge Tyrone remand hearing, WQCC 03-12 (A) and 03-13 (A). Charles de Saillan, NMED/OGD; John Kelly, Esq., Phelps Dodge; Bruce Frederick, NMELC and Charles Nylander, Watermatters, LLC.

Mr. Norton, as Acting Chair, turned the meeting over to Mr. Glass, Hearing Officer in these consolidated cases. Ms. Flowers, who had not participated in the hearing proceedings, excused herself from the meeting.

The continuation of the hearing in WQCC 03-12 (A) and WQCC 03-13 (A) reconvened at 11:05 a.m. Kathy Townsend Court Reporters transcribed the continuation. The transcript is available for review in the Office of the Water Quality Control Commission Administrator, New Mexico Environment Department, 1190 St. Francis Drive, Runnels Bldg. Room N-2150, Santa Fe, New Mexico 87505.

Mr. Glass, Hearing Officer, noted that the first order of business would be consideration of Phelps Dodge Tyrone's Motion to the Commission to Consider whether Commissioner Goad's Continued Participation is Consistent with the New Mexico Code of Judicial Conduct.

Following remarks by Phelps Dodge Tyrone and NMED, the Commission conducted a lengthy discussion of the issues raised in the Phelps Dodge Motion. During the discussion Ms. Goad declined to recuse herself from the deliberations and pledged to avoid expressing opinions based on personal experience. Rather, Ms. Goad pledged to limit her discussions and make all decisions based on the record made during the hearing.

Action: Mr. Sloane moved to deny Phelps Dodge's Motion. Mr. Von Gonten seconded. The motion passed unanimously.

Mr. Norton, representing NMED noted that though he had not been present during the hearing process, he had thoroughly familiarized himself with the case through the hearing transcripts and further that he was representing NMED at the request of Department Secretary Curry.

Oral closing arguments were then presented by Mr. Kelly, on behalf of Phelps Dodge; by Mr. Nylander, on behalf of Watermatters, LLC; by Mr. de Saillan on behalf of NMED and by Mr. Fredericks on behalf of NMELC.

Following the oral arguments presented by the parties, a discussion was initiated by the Commission regarding the issue of conducting deliberations in this matter in closed session.

The Hearing Officer recessed the meeting at 4:50 p.m. on July 7, 2008.

On July 8, 2008, the continuation of the deliberations was held at the New Mexico Energy, Minerals and Natural Resources Department, Chino Building, Porter Hall, 1220 S. St. Francis Drive, Santa Fe, NM.

Mr. Glass reconvened the hearing in WQCC 03-12 (A) and 03-13 (A) at 9:40 a.m. The Commission continued the discussion regarding holding deliberations in closed session. Commission counsel, Sally Malave, Asst. Atty. General, stated that the Commission's decision relating to the conduct of the deliberations in an open or a closed session was clearly within its discretion to decide.

Mr. Butzier indicated that Phelps Dodge would favor the Commission deliberating in open session. Mr. Nylander, acting as representative for Watermatters, LLC concurred with Phelps Dodge's position.

Charles de Saillan stated that he agreed with Ms. Malave's position that a closed session was within the Commission's discretion. Mr. Fredericks, representing NMELC concurred with NMED's position.

Mr. Von Gonten noted that roll call had not been conducted. The roll was then called, all Commissioners were present except Ms. Flowers.

Action: Mr. Norton moved that in accordance with NMSA 1978, §10-15-1(H)(3) of the Open Meetings Act, which authorizes a public body to go into closed session for the purpose of deliberating on an adjudicatory matter, the Commission go into executive session to deliberate in the matter of the appeal of the supplemental discharge permit for closure, DP-1341, for Phelps Dodge, Inc., Docket Nos. WQCC 03-12 (A) and WQCC 03-13 (A) Consolidated. Mr. Sloane seconded.

The Chair requested a roll call vote.

Roll Call:

Mr. Norton	yes
Mr. Lewis	yes
Mr. Von Gonten	yes
Ms. Bada	yes
Mr. Glass	yes
Mr. Dominguez	yes
Mr. Hutchinson	no
Ms. Johnson	yes
Ms. Goad	yes
Mr. Vigil	yes

The motion passed.

There was lengthy discussion regarding future scheduling that would allow the Commission time to continue its deliberations in WQCC 03-12 (A) and WQCC 03-13 (A), Phelps Dodge Tyrone, DP 1341.

It was agreed that the Commission would meet on August 11 and 12 as well as on September 8 and 9. The Commission will hold its regular meeting on August 11 followed by the continuation of the deliberations and will hold its regular meeting on September 8 again followed by the deliberations.

Item 7. Next Meeting – August 11 and 12, 2008 at 9:00 a.m. , NM Energy, Minerals and Natural Resources Dept., Porter Hall, 1220 S. St. Francis Drive, Santa Fe, NM

Item 8. The Hearing Officer adjourned the public meeting and went into executive session at 10:50 a.m.



Jim Norton, Acting Chair
Water Quality Control Commission