

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

IN THE MATTER OF:)
THE PETITION FOR A HEARING ON)
DISCHARGE PERMIT NO. DP-1840)
FOR THE COPPER FLAT MINE,)
)
TURNER RANCH PROPERTIES, L.P.,)
HILLSBORO PITCHFORK RANCH, LLC,)
AND GILA RESOURCES INFORMATION)
PROJECT,)
)
Petitioners.)
_____)

Docket No.
WQCC-19-02(A)



**RANCHES AND GRIP MEMORANDUM ON STANDARD FOR
SUBMITTAL OF ADDITIONAL EVIDENCE, DATA, VIEWS, OR ARGUMENTS**

Pursuant to the request of the Hearing Officer by electronic mail on August 9, 2019, the Petitioners, Turner Ranch Properties, L.P.; Hillsboro Pitchfork Ranch, LLC; and the Gila Resources Information Project (respectively, the “Ranches” and “GRIP”), hereby jointly submit a Memorandum on Standard Submittal of Additional Evidence, Data, Views, or Argument. The Ranches and GRIP have petitioned the New Mexico Water Quality Control Commission (“Commission”) to review the groundwater discharge permit, DP-1840, that the New Mexico Environment Department Secretary issued to New Mexico Copper Corporation on December 21, 2019. The Commission has scheduled oral argument on the petition for August 13, 2019 during the Commission’s regular meeting. During the meeting, one or more interested parties or members of the public may request to present additional evidence, data, views, or arguments to the Commission. On August 9, 2019, the Hearing Officer therefore invited the parties to submit their views on the legal standard for allowing such submittal.

Under the Water Quality Act, the Commission's review of the groundwater discharge permit is "on the record." NMSA 1978, § 74-6-5(Q). Nevertheless, the statute expressly allows additional comment or evidence to be added to the record "if a party shows to the satisfaction of the [C]ommission that there was no reasonable opportunity to submit comments or evidence on an issue being challenged." NMSA 1978, § 74-6-5(R). Analogous provisions of law similarly allow the introduction of newly discovered evidence after the close of the record. For example, the Rules of Civil Procedure allow a party to introduce, after final judgment, "newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial." Rule 1-060 NMRA. Moreover, the Commission is a public body making decisions on important issues of great public interest. The Commission and the Hearing Officer should therefore exercise their reasonable discretion to allow, rather than to cut off, public participation in the permitting process. *Cf. Colonial Dev. Council v. Rhino Envtl. Servs.*, 2005-N.M.S.C.-024, ¶¶ 19-35, 138 N.M. 133, 138-142 117 P.3d 939, 944-948 (discussing the importance of public participation in permit proceedings under the Solid Waste Act).

Therefore, we respectfully propose that the Commission and the Hearing Officer should allow an interested party or other member of the public to submit additional evidence, data, views, or argument under the following circumstances:

1) The party shows to the satisfaction of the Commission that there was no reasonable opportunity to submit comments or evidence on an issue being challenged, in accordance with NMSA 1978, § 74-6-5(R).

2) The party shows that newly discovered evidence, which by due diligence could not have been obtained prior to the close of the record, is relevant to the proceeding. *Cf.* Rule 1-060 NMRA.

3) The party otherwise shows to the satisfaction of the Commission good cause for not

having submitted the additional evidence, data, views, or argument prior to the close of the record.

August 12, 2019

Respectfully submitted,



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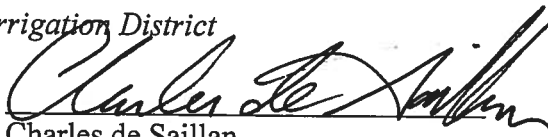
CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of August, a copy of the foregoing Ranches and Grip Memorandum on Standard for Submittal of Additional Evidence, Data, Views, or Arguments was sent by electronic mail to:

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