

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

1190 St. Francis Drive, Room N2150

Post Office Box 26110

Santa Fe, New Mexico 87502

Telephone (505) 827-2425 Fax (505) 827-0310



Constituent Agencies

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

Approved August 8, 2006

Minutes of the

Special Meeting of

New Mexico Water Quality Control Commission Meeting

June 29, 2006

1:00 p.m.

Training Room

Marquez Building

525 Camino de los Marquez

Santa Fe, New Mexico 87505

MEMBERS PRESENT:

Jim Norton	Acting Chair, NMED/EPD
Cheryl Bada	State Parks Division
Maxine Goad	Member-at-Large
Howard Hutchinson	Soil and Water Conservation Commission
Mike Sloane	Department of Game & Fish
Tim Darden	Department of Agriculture
David Brooks	Oil Conservation Division (for Wayne Price)
Peggy Johnson	Bureau of Geology and Mineral Resources
Fred Lujan	Member-at-Large
Steve Glass	City of Albuquerque – Municipal/County Representative

MEMBER ABSENT:

Edward Vigil	Member-at-Large
Greg Lewis	Office of the State Engineer

OTHERS PRESENT:

Zach Shandler, WQCC Counsel	Tannis Fox, NMED/OGC
Bill Olson, NMED	Charles de Saillan, NMED/OGC
Joyce Medina, NMED	

Jim Norton, acting as Chair, at the request of Secretary Curry, called the special meeting of the WQCC to order at 1:00 p.m.

Item 1 Roll Call:

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

Item 2 Approval of Agenda

Action: Mr. Lujan moved to approve the agenda. Mr. Hutchinson seconded. The motion passed unanimously.

Item 3 Executive Session pursuant to Section 10-15-1 (H) of the New Mexico Open Meetings Act. Discussion and possible action on Court of Appeals decision in *Phelps Dodge Tyrone, Inc. v. New Mexico Water Quality Control Commission and New Mexico Environment Department*, New Mexico Court of Appeals Cause No. 25,027.

The Chair noted Commission counsel Shandler’s memo stating that NMED has asked the Commission to join them in a Motion for Rehearing in this matter, and additionally containing recommendations relating to the executive session as well as the Commission’s discretion with respect to inviting NMED attorneys and staff to attend. Mr. Shandler mentioned that the Commission might wish to include the NMED attorneys in order to be apprised of the Department’s position in this case but not include them in the discussion period.

Additionally, Mr. Shandler, in order to fully disclose what he thought could be perceived as a conflict of interest, stated that he was getting married on July 2, 2006, and that he was marrying the sister of Dalva Moellenberg’s wife. Mr. Moellenberg is an attorney with the Phoenix firm of Gallagher & Kennedy, which firm represents Phelps Dodge. Mr. Shandler discussed the fact that NMED and the WQCC may regard this connection as one having the appearance of impropriety and that the Commission may not wish to include him in the executive session. The Chair asked Mr. Shandler to leave the meeting so the Commission could discuss this issue. The Commission conducted a short discussion about the situation and agreed that Mr. Shandler should continue to act as counsel for the Commission. Mr. Shandler was then invited to return to the meeting.

Additionally, the Chair mentioned that Mr. Shandler had recommended that NMED staff not be included in the executive session.

Action: The Chair moved that the Commission go into executive session to discuss the issues set out in Item 3 and allow the NMED attorneys to attend to explain the Department’s position with respect to the rehearing matter. Mr. Glass seconded the motion. A roll call vote was taken and the motion carried unanimously.

Commission vote

Jim Norton	yes
Cheryl Bada	yes

Maxine Goad	yes
Howard Hutchinson	yes
Mike Sloane	yes
Tim Darden	yes
David Brooks	yes
Peggy Johnson	yes
Fred Lujan	yes
Steve Glass	yes

NMED staff members Olson and Medina left the room during the executive session.

The special meeting reconvened in public.

Mr. Glass stated for the record that the only topic discussed by the Commission during the executive session was agenda Item 3, discussion and possible action on Court of Appeals decision in *Phelps Dodge Tyrone, Inc. v. New Mexico Water Quality Control Commission and New Mexico Environment Department*, New Mexico Court of Appeals Cause No. 25,027.

Mr. Shandler asked whether there had been any discussion by the Department about remand options. Mr. Glass stated that there was no discussion about remand options during the executive session.

Action: Mr. Glass moved that the Commission join NMED in a request for rehearing before the New Mexico Court of Appeals on this issue.

Mr. Hutchinson proposed to include an amendment to the motion to allow an appeal to the Supreme Court in the event the Court of Appeals declines rehearing. Mr. Glass accepted that amendment.

Mr. Brooks seconded the motion as amended by Mr. Hutchinson.

A roll call vote was taken and the motion carried, 9 voted in the affirmative; 1 voted in the negative.

Commission vote

Jim Norton	yes
Cheryl Bada	yes
Maxine Goad	yes
Howard Hutchinson	yes
Mike Sloane	no
Tim Darden	yes
David Brooks	yes
Peggy Johnson	yes
Fred Lujan	yes
Steve Glass	yes

Item 4 Adjourment:

Action: Ms. Bada moved for adjournment. Mr. Hutchinson seconded the motion. The motion for adjournment passed unanimously. The meeting adjourned at 2:05 p.m.

Signature on File

Jim Norton, Acting Chair of the Water Quality Control
Commission