

STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION

WQCC 03-12(A) and WQCC 03-13(A)

IN THE MATTER OF:
APPEAL OF SUPPLEMENTAL DISCHARGE
PERMIT FOR CLOSURE (DP-1341) FOR
PHELPS DODGE TYRONE, INC.

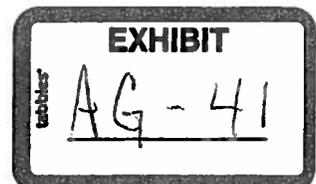
PHELPS DODGE TYRONE, INC.,

Petitioner.

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that on the 24th day of July,
2007, the above-entitled matter came before the New
Mexico Water Quality Control Commission, taken at the
New Mexico State Capitol Building, Room 317, 490 Old
Santa Fe Trail, Santa Fe, New Mexico, at the hour of
8:31 a.m.

VOLUME 2



1 future use of pumping from the open pit for the specific
2 purpose of closure requirements to operate the water
3 treatment plant.

4 MR. SCHMIDT-PETERSEN: So within that -- and I
5 was thinking -- referring to page 9 of your testimony,
6 too, you're talking about restrictions on third parties
7 with regards to drilling or foreseeable future use, and
8 it seems like you're trying to make a distinction
9 between Phelps Dodge Corporation uses of water into the
10 future versus a third party; is that correct?

11 MR. MOHR: We're making a distinction of the
12 future use of water to be that only water could be
13 pumped and utilized for mine closure, mine operation
14 purposes, no future use for any other type of activity
15 such as domestic water supply.

16 MR. SCHMIDT-PETERSEN: Have you -- have you
17 coordinated with the Office of the State Engineer
18 relative to his potential determination of beneficial
19 use of -- you know, open pit dewatering as a beneficial
20 use?

21 Because I -- that -- you know, I'm -- that's
22 where I was going with the question yesterday about, you
23 know, treatment of water, and then some use, I think,
24 would be required of that, if I understand, you know,
25 our regulations, and --

1 MR. MOHR: If I understand your question, in
2 the sense that we have coordinated with the State
3 Engineer's Office, the validity of our water right to
4 pump water from the open pit for mining purposes --

5 MR. SCHMIDT-PETERSEN: Once mining has ceased.

6 MR. MOHR: At the end of that time period,
7 when we construct and operate the water treatment plant,
8 then the water at the end of pipe from the treatment
9 plant would have a different use.

10 MR. SCHMIDT-PETERSEN: And that's where --

11 MR. MOHR: Based upon the quality of the water
12 as it comes out of the treatment plant.

13 MR. SCHMIDT-PETERSEN: Okay.

14 And that's where I was going, in that
15 distinction about use, about third parties versus
16 Tyrone.

17 Is there somewhere within the regs that you
18 can -- regulations that you can point us where the
19 Commission should make that kind of a distinction
20 between continuing, long-term Tyrone use of the water
21 versus third parties?

22 MR. MOHR: Well, Tyrone would still own the
23 rights to the water at the end of pipe. We just simply
24 have taken it from an affected water from the open pit
25 exposure to the sulfide mineralizations to a treated

1 MS. PADILLA: Okay. Thank you. I knew there
2 was something in there.

3 I guess my last question has to do with the
4 restrictive covenants -- or the proposed restrictive
5 covenants, and if water -- and we've talked about how
6 water is a public resource and is -- rights are obtained
7 through the State Engineer.

8 How would you propose a covenant on water use
9 on something that's not owned by Phelps Dodge
10 Corporation and its subsidiaries?

11 MR. MOHR: Well, Phelps Dodge owns the water
12 rights to the water that we use. Now, if you're asking
13 the question with regard to what the end use of the
14 water could be from water within the Mining and Mineral
15 permit boundary, I -- I believe you're speaking about
16 the water that would come out of the end of pipe from
17 the water treatment plant.

18 And that water, once treated, could be put to
19 some future beneficial use. I think in the enclosure
20 permit it's stated that the water would be treated to
21 groundwater standards or surface water standards. So
22 the water could be used to recharge groundwater. The
23 water could be used to be released in the Mangas
24 drainage and create riparian habitat.

25 The water could be used for other purposes

1 if -- if, upon treatment, it met some other specified
2 beneficial use.

3 MS. PADILLA: I guess my question is more
4 along the lines, though, of the restrictions -- the
5 restrictions that you all would propose to place on the
6 use of water. I guess -- that's my understanding.

7 MR. MOHR: Yes. We would --

8 MS. PADILLA: And that you will restrict
9 mine -- well placement and restrict use of water. And I
10 guess I'm -- how do you envision the covenant -- or that
11 restriction to you -- to work on something -- I mean,
12 you own water rights but not necessarily the water.

13 MR. MOHR: We envision it applying to prevent
14 drilling of wells within the permit boundary that would
15 be used for any purpose other than mining or
16 closure-related activities.

17 MS. PADILLA: Within the boundary. Okay.

18 Thank you.

19 Any other questions from the Commission?

20 Commissioner Bada.

21 MS. BADA: I just have one question.

22 Although you can certainly put a restrictive
23 covenant in a deed if you sold it subsequently, given
24 that the State is not a party to that contract, how
25 would you guarantee that a court would interpret it

1 A. Well, the treatment system will be designed to
2 operate with, I believe, a capacity of approximately
3 2,500 gallons per minute. That doesn't necessarily mean
4 that at all times you would be treating 2,500 gallons
5 per minute.

6 Q. Okay.

7 And then what will be done with that treated
8 water?

9 MR. KELLY: I'm going to object that that's
10 been answered -- asked and answered. We can do it
11 again, I guess, if you want, Madam Chair, but it's been
12 asked and answered.

13 MS. PADILLA: If you could answer that
14 question one time today, I think we can go over it. I
15 think it was answered maybe several times yesterday,
16 Mr. de Saillan, in Mr. Shelley's testimony. But
17 clarification, if you can just answer it today, we'll --

18 MR. MOHR: If the ground -- if the water from
19 the open pit is treated to meet groundwater standards,
20 it could be used as a source of recharge for
21 groundwater. If it's treated to meet surface water
22 quality standards, it could be used and discharged into
23 the Mangas as a -- as a possibility for generating
24 riparian habitat.

25 If the water met some other standard, such as

1 agricultural or livestock or domestic use, it could be
2 used for those other purposes, as well.

3 MR. DE SAILLAN: Okay.

4 Q. So in your view, is it foreseeable that this
5 water could be used for domestic purposes?

6 A. If it were treated for that purpose.

7 Q. And is it foreseeable that it could be used
8 for agricultural purposes?

9 A. If it were treated for that purpose.

10 Q. I'd like to ask you some questions about
11 landownership. And I'd like to refer you to the
12 testimony of John Shomaker.

13 Could counsel provide the witness with a copy
14 of that, please?

15 MR. BUTZIER: Right here.

16 MS. MALAVE: Which exhibit is that?

17 MR. KELLY: It's Exhibit --

18 MR. MOHR: 907.

19 MR. KELLY: I'm assuming counsel will tie this
20 question to Mr. Mohr's testimony.

21 MR. DE SAILLAN: You're assuming correctly.

22 MS. PADILLA: I'm assuming so.

23 Q. (BY MR. DE SAILLAN) Now, Mr. Mohr, I'd like
24 to direct your attention to Figure 2 in Mr. Shomaker's
25 testimony.

