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

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

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

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

Because I -- that -- you know, I'm -- that's
where I was going with the question yesterday about, you
know, treatment of water, and then some use, I think,
would be required of that, if I understand, you know,
our regulations, and --
MR. MOHR: If I understand your question, in the sense that we have coordinated with the State Engineer's Office, the validity of our water right to pump water from the open pit for mining purposes --

MR. SCHMIDT-PETERSEN: Once mining has ceased.

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

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

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

MR. SCHMIDT-PETERSEN: Okay.

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

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

MR. MOHR: Well, Tyrone would still own the rights to the water at the end of pipe. We just simply have taken it from an affected water from the open pit exposure to the sulfide mineralizations to a treated
MS. PADILLA: Okay. Thank you. I knew there was something in there.

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

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

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

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

The water could be used for other purposes
if -- if, upon treatment, it met some other specified
beneficial use.

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

MR. MOHR: Yes. We would --

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

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

MS. PADILLA: Within the boundary. Okay.

Thank you.

Any other questions from the Commission?

Commissioner Bada.

MS. BADA: I just have one question.

Although you can certainly put a restrictive
covenant in a deed if you sold it subsequently, given
that the State is not a party to that contract, how
would you guarantee that a court would interpret it
A. Well, the treatment system will be designed to operate with, I believe, a capacity of approximately 2,500 gallons per minute. That doesn't necessarily mean that at all times you would be treating 2,500 gallons per minute.

Q. Okay.

And then what will be done with that treated water?

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

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

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

If the water met some other standard, such as
agricultural or livestock or domestic use, it could be
used for those other purposes, as well.

MR. DE SAILLAN: Okay.

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

A. If it were treated for that purpose.

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

A. If it were treated for that purpose.

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

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

MR. BUTZIER: Right here.

MS. MALAVE: Which exhibit is that?

MR. KELLY: It's Exhibit --

MR. MOHR: 907.

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

MR. DE SAILLAN: You're assuming correctly.

MS. PADILLA: I'm assuming so.

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