STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION

IN THE MATTER OF PROPOSED AMENDMENTS
TO 20.6.2 NMAC, THE COPPER MINE RULE

New Mexico Environment Department, 
Petitioner. 

FREEPORT-McMoRAN
REBUTTAL EXHIBIT BLANDFORD – 9

Testimony of Mary Ann Menetrey
(September 5, 2007) (Excerpts)
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 5th day of
September, 2007, the above-entitled matter came before
the New Mexico Water Quality Control Commission, taken
at the New Mexico State Capitol Building, Room 309, 490
Old Santa Fe Trail, Santa Fe, New Mexico, at the hour of
8:36 a.m.

VOLUME 10
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Q. And are some of those -- I'm sorry.
A. Go ahead.
Q. Were you finished?
A. Yes, I think so.
Q. And are some of those processes which may occur once the contaminated discharge actually reaches groundwater, in your understanding?
A. Potentially, they could. It's --
Q. Okay.
A. Again, contamination can happen up to the standard, and there may be things that are naturally happening in the aquifer that would be a natural process that would prevent the standards from being exceeded.
Q. Now, in your testimony, as Mr. Frederick pointed out, you talk a lot about places that are to be protected, and you talk about a 30-year history of permitting this Tyrone Mine site.
Do you recall that testimony?
A. Yes.
Q. And your actual firsthand experience began sometime in the mid '90s, correct?
A. That's correct.
Q. And is the reason that you're able to discuss the 30-year history of permitting the Tyrone Mine based on the review that you described earlier of the
underlying operational discharge plan files?

A. Well, in part, but when I came to the Department, I certainly had numerous discussions with other staff and my supervisors and -- you know, who had a longer history than I did with the Department and had previously interpreted them and thinking about these same documents and had reviewed the same documents.

Q. And other than the people you've already mentioned, Marcy Leavitt and Dale Doremus, were there others that you're talking about that helped you form an understanding about a 30-year history?

A. I'm sure that there were.

Q. Let me ask you about -- about today. Are you one of the people who has the longest tenure in the Groundwater Quality Bureau at the New Mexico Environment Department currently?

A. I would say that I am among those people in the Groundwater Quality Bureau now. Yes.

Q. Are you the person with the longest history who has dealt with mining facilities in the Groundwater Bureau?

A. I don't believe -- I don't believe so, no.

Q. And who else has a longer history?

A. With mining -- I believe that -- I believe that Clint Marshall was all -- he was already in the
permitting section working on mine facilities --

Q. Okay.

A. -- when I -- it was around the same time frame, so I couldn't be absolutely sure of that, but it's close.

Q. Okay. We'll come back to some of the specific statements you make on page 3 about the 30-year history, but before I get to that, I'd like to draw your attention to page 4, under paragraph Roman numeral III, about halfway down that section on the page, where you refer to various pollution prevention measures during operations.

Do you see where I'm looking?

A. Could you repeat --

Q. It's page 4 --

A. Okay.

Q. -- under Roman numeral III, A.

And this is a section talking about Tyrone operational permits, primarily addressed to the operational phase of facilities at the Tyrone Mine.

Do you see where I'm looking?

A. I -- let's see.

MS. FOX: What paragraph are you on?


MS. FOX: Right.
But what paragraph?

MS. MALAVE: That first paragraph.

MR. BUTZIER: It's in the first paragraph, it's probably about the second to the last sentence, beginning with "The Tyrone operational permits."

MS. FOX: Thank you.

Q. (BY MR. BUTZIER) Do you see where I'm looking?

A. Yes.

I apologize. I was still thinking about the other people I had worked with who had a longer history than I did at the --

Q. Okay. If you think of others, just --

A. I did. I actually did.

MS. FOX: She's really being thoughtful about your questions.

MS. MENETREY: I did.

Q. (BY MR. BUTZIER) Well, who else?

A. Well, Maxine Goad was my supervisor with regard to all the work I did on the New Mexico Mining Act, so --

Q. Okay.

A. -- we had -- and she certainly had a lot more history than I did.

Q. And I was actually asking about people who are
still with the agency, but that's --
A. Right. I was even --
Q. -- helpful.
A. -- thinking back farther.
Q. Yeah.
A. I apologize.
Q. Well, let me draw your attention to the sentence we were just talking about on page 4 of your testimony. And why don't you go ahead and read that sentence.
A. This is the sentence "The Tyrone operational permits primarily"? Okay.
Q. That's right.
A. "The Tyrone operational permits primarily address the operational phase of individual facilities at the Tyrone Mine, and include requirements for pollution prevention measures during operations, groundwater monitoring, contingency plans, abatement of groundwater contamination, and corrective action in the event of unauthorized discharges."
Q. Now, I'd like to ask you about the various things you've listed in that sentence, and in particular starting with the groundwater monitoring.
What is your understanding of the purpose and use of groundwater monitoring under the NMED's discharge
plan program?

   A. The purpose of groundwater monitoring is to determine if groundwater is being -- how groundwater may or may not be affected by the dis -- the permitted discharge.

   Q. And is it your -- I think you may have indicated this previously. Is it your understanding that groundwater monitoring is to determine if there are exceedances of groundwater standards at the location where there's monitoring?

   A. Well, it's not just to determine -- certainly groundwater monitoring is to determine exceedances, but it's also to give you a picture of what's happening even before exceedances may occur. It -- and you're certainly measuring -- what you're measuring in that monitoring well is a snapshot of -- at that time. So you're measuring the groundwater right there at that time.

   Q. And is groundwater monitoring in any way related to contingency plans, which is the next thing you mention in this sentence?

   A. Well, yes, it is related.

   Q. What is a contingency plan, and how does it relate to monitoring?

   A. A contingency plan is the methods -- basically
a contingency plan is something that the operator
provides if there's a failure of the permit in some way,
what -- what's the operator going to do. It's a
description of what measures the operator will take
if -- if the permit fails.

Q. And when you use the term "failure" in that
context, you're not talking about a violation of the
water quality rules, you're talking about some kind of
exceedance -- some kind of contamination that -- that
occurs that maybe wasn't anticipated, and a contingency
plan is designed to address that; isn't that correct?

A. Could you repeat that? I'm sorry.

MR. BUTZIER: Could you read that back?

(Record read.)

MS. MENETREY: Well, I think it could be -- a
contingency plan wouldn't necessarily -- it could be
beyond, you know, unanticipated contamination of
groundwater. It could be other activities, as well, I
mean, besides that. I mean, for instance, you discover
that your -- your double-lined pond is, you know, ripped
or something.

I mean, there -- there's going to be
contingencies for all sorts of aspects of the discharge
besides -- but certainly if groundwater becomes
contaminated and it was not supposed to, then it would
be expected there to be a contingency for that.

Q. (BY MR. BUTZIER) What's the difference between a contingency plan and a corrective action, in the event of an unauthorized discharge?

A. Well, a contingency plan generally is in the permit. It's an action that the operator is going to take if something goes amiss. And there is going to be potentially some overlap between these.

But a corrective action plan is where something, you know, completely unanticipated happens, and, you know, something needs to be done to address it immediately. And I -- a lot of the idea behind a corrective action plan really comes from 1203 of the regulations, where you have an unauthorized discharge of some sort.

And unauthorized would include -- say you have an excursion of PLS that's going outside of the -- you know, that's moving away from a leach stockpile.

Q. Okay.

A. That isn't something normally that an operator would already have had a contingency plan for in their permit. It's an unauthorized discharge, and the regulations require that a corrective action plan be implemented to address that.

Q. And in fact, corrective actions and
contingency plans are in two complete different sections
of the regulations and addressed by different sections
in the regulations; isn't that correct?

And in particular, I'll draw your attention to
regulation 1203A, which, I think, is the provision you
were just discussing about corrective actions when there
is an unauthorized discharge.

Do you see where I'm looking?

A. Yes.

Q. So that's -- am I correct that that's the
provision you were just referring to in connection with
corrective actions?

A. That's correct.

Q. And in Section 3107, back to the discharge
plan regulations, 3107A. (10) makes a specific reference
to a contingency plan.

Do you see where I'm looking?

A. Yes.

Q. And like you said, that is -- a contingency
plan is something that is anticipated and expected of an
applicant up front in the discharge plan permitting
process, correct?

A. Yes. Contingency plans are generally part of
a discharge permit.

Q. And in fact, 3107A starts, "Each discharge
plan shall provide for the following as the secretary may require," and it lists a number of things, including number (8), a system for monitoring, number (9), procedures for detecting failure of the discharge system, and number (10), contingency plans to cope with failure of the discharge permit or system.

Do you see where I was just reading?

A. Yes.

Q. That's a whole -- contingency plans, in other words, are a whole different concept under these regulations than corrective action for an unauthorized discharge under 1203A; isn't that correct?

A. They're different, but I think that they are -- you know, can be connected given whatever the set of circumstances are.

Q. Now, there has been some mention in this case, both in Mr. Olson's testimony and in your testimony, about failure of operational discharge plans at the Tyrone site.

Do you recall that testimony?

A. Yes.

Q. Has the agency -- has the agency -- well, can you give -- can you give me the instances in which the agency has concluded that there were failures of the permits and, therefore, contingency plans were triggered
under 3107A? Do you know those off the top of your head?

A. Could you repeat the question? I'm sorry.

Q. Do you recall instances at the Tyrone Mine site where there were failures of a discharge system that resulted in triggering a contingency plan under 3107A.(10)?

MS. FOX: There's no triggering. Objection, there's no -- misstates the regulation.

MR. BUTZIER: Okay. I'll withdraw that question and ask it in a different way.

MS. FOX: Yeah.

Q. (BY MR. BUTZIER) Are you aware of instances in which there have been failures of a discharge system at the Tyrone Mine site and contingency plans were implemented under 3107A.(10)?

A. There has been numerous times, innumerable times, I could -- where contingency provisions have been -- I mean, in recent past, almost every time that a well shows an exceedance of standards, there is a -- you know, a contingency provision is implemented, and it -- and in the permits now it's pretty specific. They've gotten -- contingency provisions have gotten much more specific over the years.

And now it requires, you know, resampling of
the well at X amount of time and -- there's a whole
procedure that has to be followed, and clearly that's
happened many times.

Q. And Tyrone, in each instance that you're
talking about, has, in fact, implemented a contingency
plan and has worked cooperatively with the agency to --
to deal with those contingencies.

A. Yes. The contingency plans early on were
pretty vague and -- early in the permitting history, and
many of those contingency plans were not implemented as
they were described. But certainly any time that there
has been contamination detected, some sort of measures
were conducted by Tyrone to address it, even if it was
not, in fact, a contingency as described in the permit.

Q. Okay. I'd like to turn back now to page 3 of
your written testimony.

And you indicate in the second sentence under
Roman numeral II that in your testimony you'll describe
the approximate -- approximately 30-year history of
permitting the Tyrone Mine under the Water Quality Act
and explain how that history shows that the Department
has treated the groundwater beneath the site as
protected under the WQA and Commission Regulations.

Do you see the sentence I just read?

A. Yes.
Q. And then there are three or four different uses of the term "protected" in the rest of that paragraph and another one in the next paragraph.

What do you mean when you use the term "protected" in your written testimony?

A. What I mean is that the groundwater needs to meet 3103 standards.

Q. And so when you say that the 30-year history shows that groundwater beneath the site is to be protected, your testimony is that there's a 30-year history at the Tyrone Mine where -- where Tyrone was expected to meet standards underneath all of its facilities at the mine; is that correct? That's your testimony?

A. Yes, that that was -- the expectation would be that the water quality beneath those areas would be -- yeah, protected.

Q. Okay.

Now, Mr. Frederick asked you a question about ways to prove that a place was not a place of withdrawal, and in particular he asked you is one of those ways of proving that a place is not a place of withdrawal showing that total dissolved solids is greater than 10,000 milligrams per liter.

Do you recall that question?
MS. PADILLA: Mr. Frederick.

MR. FREDERICK: Let me object to the question. I don't think a cross on cross is allowed. If it is, I'd like to be able to redirect on Mr. Butzier's cross -- or recross on his cross of my cross.

MR. BUTZIER: We've already -- Madam Chair, we've already established in this proceeding that the attorneys are allowed to go into questioning that others have gone into at the time those questions are asked.

MR. FREDERICK: That's actually when the Commission asks questions, not when another attorney asks questions. If it is, again, I would like an opportunity to cross on information that comes out during Mr. Butzier's cross-examination, which will, of course, extend this proceeding infinitely.

MR. BUTZIER: Madam Chair, I think I -- I think Mr. -- under the procedures we've established, I think Mr. Frederick will get another opportunity.

MS. PADILLA: Yeah, on redirect.

I'll allow the --

MS. MALAVE: Well --

MR. SLOANE: Infinitely. He said infinitely.

MR. LEWIS: I heard that, too.

MR. SLOANE: That makes me cross.

(Discussion off the record.)
MS. PADILLA: Just for clarification on the process that we've established, I think, throughout this particular proceeding is that we've allowed a recross if there is a redirect --

MR. FREDERICK: Correct.

MS. PADILLA: -- and we've gone through that. But we have also allowed, I think, questions responding to or from all the -- I think all parts of the testimony and questions on that.

So I'll allow the question.

MR. BUTZIER: Okay.

Q. Do you recall Mr. Frederick asking you about whether one way to prove that a place is not a place of withdrawal of water for present or reasonably foreseeable future use is by showing that the water would be in excess of 10,000 parts per million?

A. Yes. I recall the question.

Q. And you testified that that is one way to show that a place is not a place of withdrawal, correct?

A. I don't know if that was exactly what I said. I -- I believe that I said that if it's greater than 10,000 TDS, water wasn't protected under the Water Quality Act, and so it wouldn't really even be going to that issue. But conceivably water could be withdrawn for a purpose from there, but --
Q. And how --

A. I think that's more what I said.

Q. And how do you perceive the relationship between the 10,000 milligram per liter threshold under the -- under the water quality regulations and the place of withdrawal issue? Are those two separate inquiries, or are those part of the same question?

A. Well, if -- if you have greater than 10,000 milligrams per liter TDS, you wouldn't even need to submit a -- a discharge permit application, unless, for some reason, the -- there might be a circumstance because you -- if that water was going to be through the discharge moving into waters that was less than 10,000 milligrams per liter TDS.

So in a way, though, it's a -- to me, it's a -- it's a separate issue --

Q. Okay.

A. -- than the issue of, okay, it's less than 10,000 milligrams per liter TDS, and so now we know there needs to be a discharge permit, and so we need to make sure that that discharge is protecting, you know, any place of withdrawal, so --

Q. Okay. So taking the 10,000 milligrams per liter threshold question out of my line of questioning now, I'd like to just focus on the place of withdrawal
question.

You've testified that it's the discharger's burden to show that a discharge plan will meet standards at a place of withdrawal of water for present or reasonably foreseeable future use, correct?

A. That's correct.

Q. And you've also testified that the Department assumes that all groundwater is a place of withdrawal unless the discharger proves otherwise, correct?

A. That's correct.

Q. Can you describe for me what the agency's position is as to what kind of showing would be required to demonstrate that a particular area is not a place of withdrawal of water for present or reasonably foreseeable future use?

A. I guess that I -- that I can. I mean, that's why we're here, I believe, today, this -- because this issue has never come up. It's -- that I know of. I can't recall any such circumstance.

Q. And you don't recall it coming up in the context of your review of Tyrone's operational discharge plan files?

A. Of whether the Tyrone Mine was a place of withdrawal?

Q. (Nods head.)
A. The -- the issue came up primarily from Tyrone, I believe, in correspondence, but Tyrone never appealed or, you know, went to this level of, you know, deciding the issue, so -- so we've never had to -- you know, the issue of what level of effort would be required, it just -- it just hasn't come up.

Q. So are you -- are you saying that the decision was made that the Tyrone Mine site is a place of withdrawal and that that's reflected in the Tyrone operational discharge plan files and Tyrone didn't appeal that decision?

A. There was no formal written determination, if you will, that was included in the file, that stated the Tyrone Mine is a place of withdrawal. It's, again, implied through the permitting actions.

Q. So I want to understand the logic of what you've just said.

Is it your position that if Tyrone at any point agreed to abate or address a situation at the Tyrone Mine to standards, that that -- that is the same thing as a decision by the agency that the Tyrone Mine is a place of withdrawal of water for present or reasonably foreseeable future use?

How do you get from there were certain requirements to do things inside the MMD permit boundary
to clean up to standards -- from that to concluding that
the entire mine site is a place of withdrawal of water?
Is that reflected in the -- in the files?
A. It's my testimony that in looking at the
30-year body of documents and permitting the Tyrone
Mine, that that shows, you know, in general that the
Department treated the entire mine as protected. My
testimony is not that there was a declaration of some
sort in a document, but that that, in practice, is how
the Department has been regulating the facility.
Q. Well, isn't it the case that the Department
has also looked at property ownership and the ability of
property owners to control particular areas and that
that's been a pretty significant factor in concluding
whether a particular location is a place of withdrawal?
A. I don't recall the Department looking at
ownership as determining the place of withdrawal --
Q. And you don't --
A. -- in a facility.
Q. You don't recall the Department looking at the
ability to control access to a particular area as being
relevant at all to the -- to the inquiry of whether a
place may be a place of withdrawal of water for
reasonably foreseeable future use?
A. I don't recall that in my -- any of my
Q. Okay.

A. -- or practice.

Q. And do you agree with Mr. Olson that property ownership is basically irrelevant to the place of withdrawal question?

A. Yes.

MR. BUTZIER: Madam Chair, this may be a good time for a break, because I'm going to get some exhibits out and pass them out.

MS. PADILLA: Thank you.

MR. BUTZIER: I don't know if you want to take a break or if you want to plow ahead, but --

MS. PADILLA: No. I think it's a good time for a break. Thank you. I didn't want to interrupt you, and I was -- I appreciate you bringing that up.

MR. BUTZIER: Okay.

MS. PADILLA: I think we'll take about a 10-minute break.

(Proceedings in recess from 10:18 a.m. to 10:34 a.m.)

MS. PADILLA: Okay. I think we're all back from a much needed break, so why don't we continue.

Mr. Butzier, if you'd like to continue.

MR. BUTZIER: Thank you, Madam Chair.
And I just wanted to make sure everybody got a copy of both my bound exhibits that I'm going to be addressing with this witness.

MS. PADILLA: I think everyone received a copy.

Did everyone receive a copy of the exhibits that were handed out?

Okay.

MR. BUTZIER: Thank you, Madam Chair.

MS. PADILLA: Thank you.

Q. (BY MR. BUTZIER) Ms. Menetrey, I've put in front of you Tyrone/Remand Exhibit 920 (sic), which is a paper that Commissioner Goad wrote back in 1982. Do you have that in front of you?

A. Yes.

Q. And I'm not -- I want to assure Commissioner Goad I'm not offering this to try to make Commissioner Goad feel uncomfortable at all, I just wanted to address some of the issues that have come up relating to your testimony. And in particular, I draw your attention to 12 -- page 12 of that exhibit.

Well, first of all, let me -- let me just turn back to the cover page.

Does this appear to be a paper that was
prevented by -- presented by Ms. Goad to The Sixth
National Groundwater Quality Symposium in Atlanta,
Georgia, in 1982?

MS. FOX: Objection. I don't think this
witness can lay foundation for this paper unless she is
familiar with it.

MR. BUTZIER: I'm just asking if she -- if
this -- if that's what this appears to be.

MS. FOX: Well, it says what it says, but she
can't lay foundation for a paper --

MR. BUTZIER: Okay.

MS. FOX: -- she's not familiar with.

Q. (BY MR. BUTZIER) I'd like you to turn to page
12, and do you see the highlighting that I've provided
on page 12?

A. Yes.

Q. Could you go ahead and read the highlighted
portions on page 12 into the record, please?

A. "In order to be approved a discharge plan must
demonstrate either that the discharge will not affect
groundwater with a TDS of 10,000 milligrams per liter or
less; or that the discharge will not cause standards to
be violated or a toxic pollutant to be present at any
place of present or foreseeable future use of the
groundwater."
"Almost any location in the state is considered a place of foreseeable future use unless the discharger can demonstrate that he can control the future well drilling in that location for as long as contamination from his discharge may persist there. Private wells as well as public water supplies are included in present or foreseeable future use and are protected."

Q. Now, in particular with respect to the second highlighted portion that you just read and Ms. Goad's mention of a discharger's demonstration that he can control the future well drilling in that location for as long as contamination from his discharge may persist there, is that -- is that kind of showing consistent with your understanding of the kind of showing that the Department historically would accept in concluding that a place is not a place of withdrawal of water for present or reasonably foreseeable future use?

A. Well, I can't think of any circumstance where this -- except for sitting here today at this hearing, that this was offered up as a demonstration.

Q. Okay.

Have you had -- in your tenure with the agency, with the Groundwater Quality Bureau, have you had any discussions with Commissioner Goad or others
concerning the kind of showing that a discharger might make relating to controlling the future well drilling of particular locations?

A. I can't recall any -- I can't recall any such discussions.

Q. And your testimony is that this -- this subject just never came up?

A. If it came up, I am -- was not familiar with the circumstances.

Q. And your testimony today is that somebody's landownership and ability to control a particular site is irrelevant to the place of withdrawal that this Commission must undertake? Is that the agency's position?

A. Yes.

Q. Referring now to the larger set of documents -- and I don't think this will take long. It looks more intimidating in size than it really is. This is -- I'm referring to Tyrone/Remand Exhibit 921, and I'd like you to turn -- it's tabbed 1 through 24 on the side, and I'd like you to turn to tab 1, please.

Do you recognize this document?

A. Yes.

Q. Am I correct that this is basically day one of Phelps Dodge Tyrone's submissions to the agency under
the discharge plan program that was adopted in the
regulations that became effective in 1977?
A. By day one, I'm not sure --
Q. Is this the very first letter in which Phelps
Dodge Tyrone submitted materials to the agency in 1978,
if you know?
A. There are other materials in the record that
are earlier, I think, in anticipation of the
regulations, but in terms of -- but this is definitely
one of the earliest documents.
Q. And this May 8th, 1978, document is identified
down in the right-hand corner as part of the
administrative record, document A-4, correct?
A. That's correct.
Q. And so this is a document that's in the -- in
the operational discharge plan files at the agency,
correct?
A. That's correct.
Q. Is this letter a letter that submits the
initial discharge plan, DP-27, for the Mangas Valley and
Pipeline Draw?
A. That's correct.
Q. And I'd like to draw your attention to the
highlighted portions, the third and fourth paragraphs.
Is my understanding correct that these
statements in the third and fourth paragraph themselves
don't actually refer to the Mangas Valley discharge plan
submission but relate to submissions from Tyrone?

Let me just -- let me do it another way.

Why don't you go ahead and read the third
paragraph into the record, please.

A. Excuse me. "Phelps Dodge intends, in the near
future, to drill a well in the southwest quarter of
Section 35, Township 19 South, Range 14 West. The water
pumped from this well will be used for industrial and
other purposes. This well will be located in the Oak
Grove drainage, downgradient from and approximately 4.5
miles from the leach area."

Q. Do you know what that -- what wells that's
referring to, that statement?

A. Which well --

Q. That paragraph?

A. Are you asking if I know the precise location
of that well?

Q. Are those -- is that well that's referred to
in that paragraph one of the wells that are -- that are
down the Oak Grove drainage some -- quite some distance
from the MMD permit boundary?

A. I don't recall exactly where this well is.

Q. Okay.
And could you read the next paragraph, please?

A. "Phelps Dodge proposes to monitor the quality of the water from this well on a regular basis. In the unlikely event that any seepage develops from the leach area in the future, it will be detected at this well. Pumping of this well will then intercept any flow downstream in the Oak Grove drainage before it can reach a subsequent user."

"Since Phelps Dodge owns all the land in the Oak Grove drainage down to San Vicente Arroyo, the nearest possible subsequent user would be a minimum of five miles from the well or approximately ten miles from the leach area."

Q. What is your understanding when this letter refers to the nearest possible subsequent user? What is your understanding of what that term might mean?

A. I -- I really don't exactly know what that term means. I could --

Q. Okay.

A. -- speculate that -- but --

Q. Okay. Well --

A. It could mean any number of things.

Q. Am I correct that in the two paragraphs you just read the reference to the Oak Grove drainage is a reference to the southeastern direction of the mine
site?
A. Yes. That's -- that's correct.
Q. Looking at your Exhibit 13?
A. Yes.
Q. And am I also correct that what's actually submitted with this letter is a discharge plan for -- at least what it says in the first sentence is that a discharge plan is being sent for the Mangas Valley and Pipeline Draw, which is up to the northwest end of the mine; is that correct?
A. That's correct.
Q. Okay.
I'd like to have you turn to -- to the second document, please, tab 2.
Is this a 1978 submission by Tyrone of a discharge plan for the tailings ponds, collection ponds and oxidation ponds in the Mangas Valley?
A. Yes.
Q. And is this the original discharge plan, as far as you understand, that was submitted by Tyrone which ultimately resulted in Discharge Plan 27?
A. Yes, it is.
Q. And you indicated in your testimony yesterday that you were, for a time at least, the discharge lead -- or excuse me -- the permit lead at the agency
for Discharge Plan 27; is that correct?

A. Yes, that's correct.

Q. Is this a document that you reviewed at any
   time during your time of serving as the discharge -- or
   excuse me -- the permit lead at the agency? Is this
   something that you reviewed when you were discharge --
   excuse me -- permit lead at the agency?

A. Yes, I did.

Q. And did you also review this document before
   providing your written testimony about the 30-year
   Tyrone history in this case?

A. Yes, I did.

Q. All right.

I'd like to turn to the first highlighted
page, which is the page that has Introduction at the

top.

Do you see where I'm looking?

A. Yes, I do.

Q. And could you go ahead and read that first
   highlighted paragraph into the record?

A. "This plan shows that groundwater at the point
   of withdrawal for present or reasonably foreseeable
   future use meets the conditions as set forth in Sections
   3-103, 3103.A" -- excuse me, I forgot the "(first
   paragraph)" after 3.103 -- "3103.A, 3-103.B and 3-103.C
of the New Mexico Groundwater Regulations. Therefore, the plan should be approved because it meets the conditions as set forth in Section 3-109.C.3 of the Regulations."

Q. Okay.

And does the next paragraph go on to basically provide Tyrone's summary that the discharge plan being submitted will not result in either concentrations in excess of the standards of Section 3-103 or the presence of toxic pollutants at any place of withdrawal of water for present or reasonably foreseeable future use?

A. Yes.

Q. Now, I'd like you to turn to -- and some portions of the facilities being permitted at this time in 1978 already were in existence on the ground; is that correct?

A. That's correct.

Q. I'd like you to turn to the page that's numbered 2, which is the very next page, the portions I've highlighted where the discharge plan submitted by Tyrone refers to seepage quantity.

Do you see where I'm looking?

A. Yes.

Q. And is that -- is that section of this discharge plan submission a section which identifies
seepage of -- tailings pond seepage into groundwater based on certain acre-feet?

A. It appears to. Yes.

Q. And isn't it correct that this document is telling at the time the Environmental Improvement Division that in years 1973, for example, 5,260 acre-feet of tailings pond seepage was going into groundwater?

A. That's correct.

Q. And the same for the other years listed, that in those other years, as much as, in one year, 1977, 6,118 acre-feet of tailings pond seepage was making its way to groundwater at this site; is that correct?

A. Yes.

Q. And on page 3, the portion at the top, is that indicating that the -- the potential contamination that is being discharged is high in fluoride and occasionally high in pH and molybdenum?

A. Yes. It indicates that those are the parameters in the discharge that --

Q. So --

A. -- occasionally exceed --

Q. So would you agree with me --

MS. FOX: If she could answer.

MR. BUTZIER: I'm sorry.
1 Q. Were you finished?
2 A. Yes.
3 THE REPORTER: State it again.
4 MS. MENETREY: That these parameters were
5 those that occasionally exceeded standards in the
6 discharge.
7 Q. (BY MR. BUTZIER) Well, the ones that were
8 occasionally were the pH and the molybdenum, correct?
9 A. Yes.
10 Q. And it's indicating that -- that it will be
11 higher in fluoride and doesn't limit that to
12 occasionally, correct?
13 A. That's true.
14 Q. And in the next highlighted portion, does this
15 discharge plan, submitted in 1980 -- '78 by Tyrone,
16 indicate that the tailings ponds are located on natural
17 drainages to the Mangas Valley?
18 A. Yes, it does.
19 Q. And it goes ahead and repeats essentially in
20 text form the information provided in the table on page
21 2, namely the number of acre-feet of seepage quantity
22 per year; is that correct?
23 A. Yes.
24 Q. And then there's another portion that's
25 highlighted further down the page, page 3, that talks
about the decant return water sumps and the seepage rate
that is occurring from -- from that facility; is that
correct?
A. Yes.
Q. And if you turn to page 5, under the heading
Groundwater Discharge Sites, what is your
understanding -- go ahead and take a look at that and
then tell me what your understanding is of what Tyrone
was providing to the agency in 1978.
A. Just -- are you asking me to look at
continuing onto page 6?
Q. Correct.
A. Okay.
Q. And if you'd like to just read it, that's
fine, or if you'd like to look at it and then give me
your understanding of what information is being
presented to the agency, I'll take either approach.
A. I'll go ahead and read it -- I mean look at
it.
Q. Okay.
A. Well, it appears that Phelps Dodge is
providing the location of wells within one mile of the
outside perimeters of each of the tailing impoundments
or associated facilities to the tailing impoundments.
Q. And on page 3, the document actually refers to
the outside perimeter of discharge sites; isn't that correct?

MS. FOX: Where is that?

MR. BUTZIER: On the bottom of page 5.

MS. FOX: Oh, I thought you said page 3.

MS. MENETREY: That's what I thought, too.

MR. BUTZIER: Oh, I may have. I apologize if I did.

MS. MENETREY: I'm sorry. Could you repeat the question?

Q. (BY MR. BUTZIER) Tyrone's discharge plan document specifically refers on page 5, in the highlighted portion, to the outside -- the wells -- wells within one mile of the outside perimeters of the discharge site; isn't that correct?

A. Yes.

Q. And discharge site is the same term we referred to earlier that is defined in the Water Quality Control Commission's Regulations, correct?

A. That's correct.

Q. And the one mile information outside the perimeter of the discharge site -- is it safe to conclude -- or would you conclude that that is submitted pursuant to regulation 3106C.(2) of the Water Quality Control Commission's Regulations?
A. Well, it would appear that the -- that Tyrone
was attempting to satisfy that requirement.
Q. And the note on page 6 that is highlighted in
the discharge plan submission from Tyrone notes that
there are probably other wells in the private land north
of the Phelps Dodge property line within a one-mile
radius of decant return water ponds.
Do you see where I'm looking?
A. Yes.
Q. Okay.
And in the portion highlighted on the bottom
of page -- page 6, this talks about the groundwater most
likely to be affected by the discharges from the
tailings ponds.
Do you see that?
A. Yes.
Q. And do you see that it indicates that the
groundwater discharge site in this area or the wells
most likely to be affected by the discharge are wells
10, 11, 12, 13, 14 and 15? Do you see where I'm
looking?
A. Yes.
Q. I'd like you to turn to page 9 of this
document, which is a page that begins with the heading
Monitoring, and then there's some highlighted portion
about groundwater quality.

    Do you see where I'm looking?

A. Yes.

Q. And can you read A under the heading Groundwater Quality?

A. "The monitoring of the quality of the groundwater will be conducted at wells Number 14 and 15."

Q. And do you know where wells 14 and 15 are located in relation to the Tyrone Mine site?

A. Approximately.

Q. And could you please identify that, if you can?

And I can either put up --

A. Well --

Q. -- Mr. Blandford's exhibit or you can do it on Exhibit 13 that you've already referred to, whichever you prefer.

A. If I'm correct, I believe those wells are located at -- near the intersection of the Wind Canyon drainage and Mangas Wash at the -- you know, near the base of the Number 3 Tailing Impoundment.

Q. And is it your understanding that wells -- monitoring wells 14 and 15 are actually outside of the currently delineated MMD permit boundary?
A. On this map, they are outside of the boundary.
Q. And by this map, you're referring to -- what do we call this? Blandford-5?
A. Am I correct in pointing to wells 14 and 15 that were going to be used as monitoring wells for Discharge Plan 27?
Q. Okay.
A. I believe so.
Q. And I'd like to turn now to page 10, and look at paragraph H that's highlighted.
A. Could you go ahead and read that, please, into the record?
Q. "Given the volume of seepage and the distance to the monitor system, there is no reason to expect contamination to show up after cessation of operations when such contamination has not reached the monitor system prior to cessation of the long-term operations."
Q. And does the rest of the highlighted portion on page 11 refer to the contingency plan being offered by Tyrone in 1978?
A. Yes.
Q. Okay.
And I'd like you to go ahead and read, if you would, the first part of the text under Contingency
Plan.

A. "Subsequent water users will be protected in the following manner:

"Monitoring of wells Number 14 and 15 will be conducted as described previously."

"An analysis will be made of the analytical results of the monitoring to detect any increase in the concentration of any of the constituents listed in Table 6."

"If an increase in the concentration of any of the constituents listed in Table 6 is detected, a rate of increase will be calculated to predict when the concentration of any of the constituents will exceed the standards in Section 3-103."

"Phelps Dodge will begin the following upon chemical evidence indicating a consistent increase in concentrations beyond that expected due to normal analytical error and natural geochemical variation in aquifer water quality:" 

"A feasibility study will be made to determine the method which will be used to prevent harm to subsequent users."

Q. And what is -- Ms. Menetrey, what is your understanding of what Phelps Dodge Tyrone was telling the agency in the portion that you just read, which is
tab 2 to Tyrone Exhibit 921, page 11?

A. Well, what it says is that Phelps Dodge is proposing to monitor wells number 14 and 15 and that their contingency plan proposal is if -- if the constituent concentrations begin to increase in those wells and -- that they will conduct some sort of a study to, you know, determine the fate of the contamination.

Q. And --

A. And the standards will be exceeded.

Q. And specifically to prevent harm to subsequent users, correct?

A. That is stated in the contingency plan.

Q. So isn't this -- isn't this telling the agency that with respect to the facilities that it's proposing a discharge plan for in the Mangas -- Upper Mangas Valley, that there will be monitoring conducted at this location, at wells number 14 and 15, as depicted on Blandford-5, and that if it looks like there is a change in the trends, that then a study will be conducted to figure out how to protect subsequent users farther on down Mangas Valley?

Isn't that what this document is talking about?

A. This document is Phelps Dodge's proposal. It doesn't say that subsequent users would be farther down
Mangas Valley specifically, but -- but this was Phelps Dodge's proposal at the time.

Q. Okay. I'd like you to turn to tab 3 in Exhibit 921, please.

Can you identify that document for the record, please?

A. This is the letter dated November 9th, 1978, from EID -- let's see -- approving the discharge permit for Mangas Valley.

Q. And does the highlighted portion of this November 9, 1978, discharge plan approval letter -- does that specifically refer to the discharge plan submission of the agency -- or of Tyrone rather?

A. I believe it does. Let me check the date.

Well, there appears to be -- the date on the application in tab number 2 appears to be different than the date referred to in the letter, so --

Q. And tab 2 just refers to April, 1978 --

A. So I can't -- I can't be absolutely sure from this letter that --

Q. Okay.

A. -- that is the same document.

Q. Well, I'll represent to you that that's my understanding, and if the Department determines to the contrary, I will stand corrected, but -- does this
letter also -- let me ask you just a process question.

In the early days of the discharge plan

program --

MS. FOX: Objection.

Q. (BY MR. BUTZIER) -- with the agency --

MS. FOX: I've got to object to his -- the

testimony that he just provided about what his
understanding is of this document.

MS. PADILLA: Sustained.

Q. (BY MR. BUTZIER) Ms. Menetrey, do you know of
any other discharge plan submitted by Tyrone that might
be referred to as having been received on May 10th,
1978, by the agency?

A. I can't recall. I don't remember one. I
can't recall if there was --

Q. Okay.

A. -- another submittal that might have referred
to.

Q. And back in the early days of the discharge
plan program, is it the case that typically the approval
of a discharge plan would simply come in the form of a
letter from the agency referring to various documents,
typically including the discharge plan and maybe further
clarifying letters? Is that correct?

A. That's true. And that didn't mean the
Department necessarily agreed with everything that was in those -- those documents, but that is how plans were approved in general under that format.

Q. And in particular, this one refers not only to the discharge plan that Tyrone had submitted, but also a couple of letters, correct? September 11 and November 8th, 1978?

A. Yes.

Q. And the September 11 letter that's referred to in the discharge approval letter at tab 3 appears as tab 4, and I'd ask you to turn to tab 4, please.

Is the first page of tab 4 a letter from a Phelps Dodge Tyrone manager to the Program Manager of the Water Pollution Control Section of the Environmental Improvement Division?

A. Yes.

Q. And if you'd go back a couple pages to the page numbered 2 at the top.

Again, I'm at tab 4 of Tyrone Exhibit 921, and I'm referring to the page in tab 4 that's numbered number 2.

Do you see where I'm looking?

A. Wait a minute. Back up.

MR. FESMIRE: The third page back numbered number 2.
MR. BUTZIER: Thank you.

MS. MENETREY: Third page back. Okay.

MR. BUTZIER: Behind the letter to Maxine Goad.

MS. MENETREY: Yes.

Q. (BY MR. BUTZIER) And could you read the highlighted portion of paragraph 3b, please?

A. "Phelps Dodge maintains, as stated in the proposed Discharge Plan, that monitoring wells 14 and 15 at the proposed frequency will adequately protect subsequent users. Monitoring wells Number 10 through 13 at the same frequency is not necessary in this regard."

Q. Is it your understanding that this submission, the September 11 submission from Tyrone, most likely responds to a letter that Tyrone received from the agency asking for follow-up information relating to the discharge plan submission?

Does it appear to be responding to -- to a letter from the agency?

A. Yes, it appears to be.

Q. And is this stating Tyrone's position that monitoring wells -- monitoring at wells 14 and 15 as previously proposed would be adequate to protect subsequent users?

A. That's what it says in this letter.
Q. And is it your understanding that subsequent users would be potential users of groundwater that would be downgradient, in other words, farther up -- farther down Mangas Valley from the locations of monitoring wells 14 and 15?

A. Not necessarily. I don't believe there was any -- ever any analysis of what the subsequent users -- where they would have been.

Q. Okay.

And the next highlighted portion on page 4, would you read that, please?

A. "Phelps Dodge maintains that the Contingency Plan does provide adequate protection for subsequent users."

Q. So again, this is -- this is likely a response to some questions that were raised by the agency, correct?

A. Probably, yes.

Q. And if you'll turn to -- and the document at tab 4, the September 11, 1978, document, that's one of the two letters referred to in the discharge plan approval letter dated November 9th that appears as -- at tab 3 of this exhibit packet; is that correct?

A. Yes. It appears to be.

Q. And at tab 5, we have the other letter that's
referred to in the discharge plan approval letter, which is the November 8th, 1978, letter, again from a manager of Tyrone Mine to the program manager at the agency; is that correct?

A. Yes.

Q. And if you'd like, you could take a minute to look at that, but I don't think -- I didn't find it particularly relevant or -- I didn't find it to change anything about the prior submissions as to the monitoring wells, the contingency plan or the protection of subsequent users.

Do you see that? Would you agree with that?

A. Yes. It appears it has to do with water level measurements.

Q. Okay.

So taking Exhibits -- Exhibits 2, which is the discharge plan submission, 3, which is the discharge plan approval, 4, which is the letter to Maxine Goad responding to some questions from the agency, and 5, which is the letter that you just referred to as addressing water depth issues, let's talk about -- let's talk about what was -- what was being approved in this instance.

Am I correct that this approval of DP-27, which was the very first -- well, I don't know if it was
the first approval, but it was the earliest discharge plan submission.

Am I correct that this discharge plan approval allows seepage to occur to groundwater beneath the tailings disposal facility and the water decant facility and that's set forth in the plan and that's understood by the agency and that's approved? Would you agree with that?

A. Yes. Certainly there's many facilities, especially unlined facilities, where seepage is part of the discharge. It's -- it happens as a consequence.

Q. Okay.

And am I also correct in understanding from this sequence of documents that Phelps Dodge Tyrone satisfied the agency that the actual location of the facilities were not locations where groundwater needed to be protected, as you have used that term?

A. No. I don't agree that -- that that was the measure of satisfying the agency. At the time that this permit was approved, it's very important to note that there were several wells in the valley, but none of them showed any contamination above water quality standards, regardless of all the seepage that had gone on for eight years.

And so you really have to take yourself back
in time, not look at things as they are now, but how they were then. There was no exceedances.

And again, not all the documents associated with the discharge plan approval are in this packet, but there were certainly many representations by Tyrone that there was absolutely no expectations that groundwater standards would be exceeded within the Mangas Valley monitor wells.

Now, this is a very early discharge permit -- or discharge plan. The regulations were extremely recent. And there's no question that the very early permit applications -- or I guess discharge plans is what I'll call them, because we have permits now -- were definitely fairly weak in the monitoring and the contingency aspects.

And that's an area that we've evolved dramatically in -- I would say over the last 30 years. But at that time, you know, looking at the permit, the Department was satisfied that groundwater standards would not be exceeded. And that's my --

Q. And is it your testimony --

MS. FOX: Let her finish.

MR. BUTZIER: I'm sorry.

Q. If I didn't let you finish, go ahead and finish.
A. I think I'm done. I lost my train of thought there.

Q. Sorry.

Would you -- Tannis, would you like us to see where she was on the record and have her finish or --

MS. FOX: See if it -- yeah.

MR. BUTZIER: Okay.

MS. FOX: I mean, you did -- her voice trails off, and then you cut her off, and you just need to be a little careful of that, please.

MR. BUTZIER: Cheryl, could we go back in the transcript and read her last answer, please?

(Record read.)

MS. MENETREY: Ah. I guess I did stop midpoint there.

So I think that as a whole, that when the Department was looking at this permit, they thought that standards would be met, and it didn't relate to that there were not places of withdrawal for wells closer to impoundments than wells 14 and 15.

You know, certainly within a couple of years on this particular permit, even though those wells 14 and 15 were the wells that were monitored, there were several other wells in the valley which were also being monitored by Phelps Dodge, and I think within a couple
of years of this permit approval, there were some elevated concentrations of various contaminants.

And if you continue to look at the correspondence, it's clear that the Department was very concerned about the -- that this contingency plan proposed in this discharge plan was inadequate and -- and you see a chain of events where it was tightened up quite a bit.

Q. (BY MR. BUTZIER) So is it your testimony that all of these references to protecting subsequent users and submitting a plan that will meet standards at places of withdrawal of water for present or reasonably foreseeable future use -- that those were essentially ignored by the agency and that the discharge plan was approved with the agency understanding that beneath the facilities where the seepages were going to occur were places where standards had to be met? Is that your testimony?

A. I wouldn't want to imply that the Department simply ignored any of the -- those sorts of statements in the discharge plan application.

It was very common in discharge plan applications from Tyrone that there would be statements regarding so-called subsequent users, but I don't believe there's anything in the record where there was
discussion or confirmation or affirmation of where these
subsequent users would be, or any determination in that
regard.

I believe that the Department -- certainly
it's been my experience -- looks at a discharge plan
application and really is making sure that they
believe -- or that it believes that the requirements of
the regulations have been met by the plan. And that
does not mean that if the plan was approved, that there
was agreement with all of the statements that were made
by an applicant in the plan.

And so my -- you know, looking at the general
course of permitting on DP-27, yeah, I believe that the
Department expected for standards to be met within
Mangas Valley.

Q. Including immediately -- your testimony is
including immediately beneath the facility where the
seepage was to occur, correct?

A. The general course of conduct under -- over
permitting this facility required that standards be met
underneath the tailing impoundments.

Q. And are you referring to specific documents
that you recall seeing in the administrative record to
that effect?

A. Well, certainly the more recent correspondence
reflects that more, but without -- I mean, again, there's so many documents that I don't have all the documents memorized.

But I certainly refer -- or refer -- I recall that -- in the late '80s, I recall a document where there was a letter from the Department making it very clear that if standards were exceeded at points below -- and when I say below, I'm saying, you know, upgradient in the valley from wells 14 and 15 -- that if there were exceedances, that those need to be returned to groundwater standards.

Q. Okay.

A. So I think there's a lot of documents there --

Q. Give me the high sign.

A. -- that clarify -- that add -- I'm sorry, what's going on -- that add clarification to that.

You know, I can't stress it enough. These early documents were often very vague. And I remember -- in fact, I think it was in 1983 -- that whoever -- I think it was Albert Dye was reviewing this and made comment that this was incredibly vague -- and I don't want to say incredibly was a quote, but that it was very vague, and that clearly, you know, the Department couldn't even really tell what would happen if standards were exceeded in the valley.
So I just wanted to make that comment.

Q. Okay.

And let's turn to the next document in the packet, which is tab 6.

Is that a memorandum from Mr. Charles Nylander to Ms. Maxine Goad, the Program Manager for Permits and Regulations Unit?

A. Yes, it is.

Q. And could you read, please, the first highlighted portion of the first paragraph in that document?

A. "I have completed a technical review of the above referenced discharge plan received May 10th, 1978, and the additional information received from Phelps Dodge Corporation and dated September 11th, 1978 and November 8th, 1978. This plan adequately shows that groundwater at the point or" -- I believe it's supposed to say of -- "withdrawal for present or reasonably foreseeable future use meets the condition set forth in Section 3-103 (first paragraph), 3-103A., 3-103B. and 3-103C. of the New Mexico Water Quality Control Commission regulations."

Q. And apart from what you've just discussed in your answer previously about some -- some thought processes that occurred in 1983, do you know what
Mr. Nylander was referring to when he said in the portion you just read that the plan adequately shows the groundwater at the point of -- or withdrawal for present or reasonably foreseeable future use meets the conditions set forth in the sections referenced?

Do you have an understanding of what -- what he meant by that?

A. Well, it's not clear in this memorandum, because at the time that this was written, there were no groundwater exceedances in -- associated with the tailing impoundments. And so this memorandum does not define a particular point of withdrawal.

Q. And it's your --

A. So could it --

Q. Sorry.

A. I'm sorry.

I guess it could have been anywhere. It doesn't -- it doesn't state in this memorandum.

Q. And it's your testimony that never in the 30-year history did the Department, in fact, define a place of withdrawal for purposes of review and approval of a discharge plan; is that correct?

A. I have -- do not recall that ever being defined.

Q. Now, let's turn to tab 7 in Tyrone
Exhibit 921.

Is this a letter that also relates to Discharge Plan 27?

A. Yes.

Q. And in the first paragraph -- this is a June 8th, 1984, letter renewing DP-27; is that correct?

A. Yes.

Q. And am I correct that the first paragraph of this letter again refers to the information and material submitted as part of the original discharge plan approved November 9th, 1978, which is a reference to the letter at tab 3 of Tyrone 921?

A. Yes.

Q. And again, is that pretty much what the -- what the practice was in the mid 1980s, that as discharge plans were renewed, there were references back to the materials that were submitted by the proponent of the discharge plan?

A. Yes. That's correct. That is the general process.

Q. Okay.

Now, you talked about Mr. Albert Dye and some -- some background, I think, related to 1983.

Let's turn to tab 8.

Is this a letter to the same Albert Dye that
you were referring to?

A. Yes.

Q. And in the first highlighted part of this, does this appear to be a Tyrone letter responding to an Albert Dye letter of August 5th, 1983, that relates to the renewal we just looked at --

A. Yes.

Q. -- for Discharge Plan 27?

A. Yes.

Q. And in the highlighted part of the bottom of that page, could you read that into the record, please?

A. "The quantity of seepage from the tailing ponds is based upon an input-output analysis. The formula used to calculate tailing pond seepage is approved by the State Engineer and the results are sent to his office on a monthly basis on the form that was attached to the original Mangas Valley Discharge Plan submittal."

Q. And on page 2 of the document at tab 8 of this packet, could you read the highlighted portions at paragraph 4?

A. "A map showing the property lines of Phelps Dodge Corporation and its subsidiaries in the Mangas Valley is enclosed with this letter. Other property owners in this area are outlined in yellow on the map."
Q. Now, just as a side comment, this letter provided a map of property lines of Phelps Dodge Corporation and its subsidiaries in the Mangas Valley.

And I'm recalling Mr. Olson's testimony that he was learning for the first time that Phelps Dodge Corporation -- Phelps Dodge Tyrone didn't actually own all the properties at this site.

Were you also hearing that for the first time when that was discussed in Mr. Mohr's and Mr. Shelley's testimony?

A. No. I knew that there were other subsidiaries that had ownership out there, as well as the fact that there's subsurface land or mineral rights that are also owned in Mangas Valley by the State Land Office, so -- so I was aware that --

Q. And institutionally --

A. -- there was some other ownership.

Q. I'm sorry.

And institutionally the agency was aware since at least September 6th, 1983, or approximately September 6th, 1983, that Phelps Dodge and subsidiaries owned -- Phelps Dodge Corporation, the parent, and subsidiaries of the corporation owned property at this site, correct?

A. Yes. I think this was a long time ago, and
the degree of recollection is -- you know, I certainly was refreshed on this issue through this hearing.

Q. Now, let's look at page 3 of the September 6 letter to Mr. Dye, which is tab 8 of Tyrone Exhibit 921. Could you read the highlighted portion on page 3, please?

A. "We believe that this monitoring system gives good coverage of the Mangas Valley and should allow an early warning of any groundwater quality problems from any source."

Q. And the next paragraph?

A. "We believe that our contingency plan is still an effective means to protect the groundwater in the Mangas Valley. Although no one method is specified in the plan to prevent harm to subsequent users, we have always considered the interception of a seepage plume to be technically feasible in the Mangas Valley. "Mitigative actions in this area are not likely to be needed because the natural chemical and physical processes of sorption, dilution and dispersion in combination with the quality of the effluent have proven to be generally very effective in preventing lasting effects on the Mangas Valley groundwater system by the tailing ponds."

Q. So is it your understanding that Tyrone was
telling the agency that if a seepage plume develops and is identified by the monitoring wells for this facility, that it will be able to take mitigative actions, but that probably they won't be needed because of natural and chemical processes, including sorption, dilution and dispersion? Is that your understanding of what the agency was telling -- or the company was telling the agency?

A. It appears the company was telling the agency yes, that they could potentially install a seepage well, some sort of seepage interceptor system in the future if it was necessary. But again, were reinforcing there really aren't any problems right now.

Q. If you --

A. Or at that time. Excuse me.

Q. And if you'll turn to the enclosure with the letter at tab 8. If you'd take a look at that for a minute, and in particular the highlighted figures in that table.

Am I correct in understanding that this submission to the agency from Tyrone identifies acre-feet of seepage from various facilities including dam 1, dam 2, dam 3, dam 1X and dam 3X for the years 1978 to 1983?

A. It appears to. Yes.
Q. Okay.

And it -- and it's referring to seepage from those facilities to groundwater; isn't that correct? If you know.

A. I don't know if all of that seepage went to groundwater, but certainly from the ponds.

Q. And a lot of the seepages identified on this table occurred after the original approval of Discharge Plan 27 approved on November 9th, 1978; isn't that correct?

A. Yes.

Q. And notwithstanding this information, the agency approved the renewal of discharge plan DP-27 on June 8th, 1984, as reflected at tab 7; isn't that correct?

A. That's correct.

Q. All right. Let's turn to tab 9 in Tyrone 921. Can you identify that document, please?

A. It's a 19 -- a letter from EID dated August 5th, 1983, to Richard E. Rhoades, the Manager of Phelps Dodge Corporation, regarding the Mangas Valley discharge plan.

Q. And does this letter appear to request certain information from Tyrone in the context of the agency considering whether to review DP-27 in the 1983 time
Pages 2579 – 2585
(intentionally omitted)
And before we break -- I appreciate the reminder -- is there anyone in the audience that would like to provide any public testimony or public comment at this time?

Seeing none, we'll recess until 1 o'clock.

Thank you.

(Proceedings in recess from 11:45 a.m. to 1:06 p.m.)

MS. PADILLA: Okay. I think we can reconvene. I hope everyone had a nice lunch. And I think we can pick up where we left off.

Mr. Butzier, I think you still had some questions for Ms. Menetrey.

MR. BUTZIER: Thank you, Madam Chair.

Q. Good afternoon.

A. Good afternoon.

Q. Ms. Menetrey, I was in Tyrone/Remand Exhibit 921, and I think I finished off with tab 10, and now I'd like to move on to tab 11.

And just for the record, this starts to get into documents that relate to Discharge Plan 166.

And am I correct, Ms. Menetrey, that you were also the permit lead for a certain time period for Discharge Plan 166?

A. Yes, I was.
Q. And you familiarized yourself with -- with the operational discharge plan files for 166 before providing your recent testimony in this case?

A. Yes, I did.

Q. And what was the period of time when you served as the permit lead for Discharge Plan 166?

A. It would have been in the time frame between 1994 and 2000. I couldn't say that it was -- started immediately. So I don't recall the exact dates. But it would have been within that time period, several years within that time period.

Q. And when you became the permit lead, did you undertake to go back and look at the historical record relating to DP-166?

A. Yes, I did.

Q. Now, would you please take a look at the document at tab 11 of Exhibit 921, and would you please identify that document for the record?

A. This is a letter from EID dated July 20th, 1981, from -- it's from the Director of the Environmental Improvement Division, approving the discharge plan for DP-166.

Q. And again, just so that we can orient ourselves to the site, could you please identify the area that 166 covers?
Q. You're looking at Exhibit 13, NMED Exhibit 13.
A. Yes. DP-166 covers a large area, including the Main Pit, in the center of the mine, the SX/EW plant to northwest of that, several other open pits, including San Salvador Hill Pit, the Copper Mountain Pit, and also the Number 2 Leach Stockpile. And I believe there's some waste rock piles in that area, as well.
Q. And is -- am I correct that this July 20, 1981, letter is the original approval of Discharge Plan 166?
A. Yes, I believe it is.
Q. And turning now to tab 12, there's a letter and then an attached proposed discharge plan. Do you see where I'm looking?
A. Yes.
Q. Is this the submission, to the best of your knowledge, that is referred to in the July 20, 1981, letter where it says "The approved discharge plan consists of the plan received on March 24, 1981," et cetera?
A. I -- I believe so.
Q. Now, in the document that it -- well, the first document behind tab 12 is a March 23, 1981, letter; is that correct?
A. Yes.

Q. And that letter describes generally what is being proposed and what is being submitted to the agency, correct?

A. That's correct. It's the proposed discharge plan.

Q. And in the actual discharge plan that was enclosed with that letter, I'd like you to refer, if you would, to page 3 of the proposed plan.

Does the highlighted part of page 3 refer to sites of potential discharge to groundwater?

A. Yes. That's what it says.

Q. And it's addressing sites that include the Number 2 Leach Dump, the pregnant leach solution sump at the plant site, the pregnant leach solution sump below the dump, a section of the Niagara Tunnel serving as a pregnant leach solution sump and the raffinate solution pond at the plant site? That's what this plan covers, correct? Or that's what -- that's what this plan says are sites of potential discharge to groundwater, correct?

A. That's what it says. Yes.

Q. And turning to page 4, page 4 indicates in the first highlighted section that the infiltration rate from the Number 2 Leach Dump, the very first item listed
on page 3, is estimated to range from approximately
1,200 to 1,300 gallons per minute; is that correct?
   A. That's what it says. Yes.
Q. And for the pregnant leach solution pond at
the plant site, the highlighted portion says that the
seepage quantity at that site will be approximately
150,000 gallons per year?
   A. That's correct. That's what it says.
Q. And for the pregnant leach solution pond below
the dump, the seepage quantity at this rate will be
approximately 1,200,000 gallons per year; is that
correct?
   A. That's correct.
Q. Now, on page 5 of the same document, which is
tab 12 of Exhibit 921, is the highlighted part a
discussion of basically the flow characteristics of the
discharges discussed previously in the plan?
   A. That's -- that's what it says. Yes.
Q. And in the very first part of the highlighted
paragraph starting with "Pregnant leach solution," could
you read that into the record, please?
   A. "Pregnant leach solution will infiltrate to
the groundwater directly underlying the dump from the
bottom of the leach dump. Infiltration will occur
predominantly through faults and fractures in the rock
and, to a lesser extent, through interconnected microfractures in the rock."

The next paragraph, as well?

Q. Yes, please.

A. "The existing groundwater gradient through the leach dump area is to the north. In general, groundwater flows parallel to its gradient. However, over small areas (several hundreds of feet) in a fractured medium, such as exists here, the direction of flow may be dominated by the direction of the fractures. Over large areas, where fractures and faults intersect, the flow direction is dominated by the groundwater gradient. Hence, the expected flow of any leachate intersecting the groundwater is to the north."

Q. And then turning to page 7, the highlighted portion at the top, does that refer to -- again to the infiltration rates from the leach dumps?

A. Yes, it does.

Q. And again it refers to 1,200 to 1,300 gallons per minute of infiltration?

A. Yes. That is what is referred to.

Q. Okay.

Now, the next section of this proposed discharge plan refers to expected concentrations of 3-103 contaminants.
Do you see where I'm looking?
A. Yes, I do.
Q. And in that section, including onto the next page, is that a discussion of what the expected concentration of the contaminants being -- infiltrating into groundwater will be?
A. I believe that this is a discussion of what the concentration of contaminants would be in the discharge.
Q. Okay.
A. Not necessarily -- I mean, that's what's described here, not necessarily what would infiltrate into groundwater.
Q. Okay.
Is there -- well, let's turn to the next -- the table on page 8. And I've highlighted three different things, but I'd actually like to draw attention to six things.
And the first line that I'd like to have you look at is the copper line, Cu.
Do you see where I'm looking?
A. Yes.
Q. Does that indicate that the concentration of copper in discharge related to the pregnant leach solution, the middle column, is 1,000 parts per million,
or milligrams per liter?

  A. That's what the table says. Yes.

  Q. And do you know what the 3103 standard for copper is?

  A. I'm going to refer to the regulations just to make sure that I --

  Q. Thank you.

  A. -- get that correct.

  And the standard is 1 milligram per liter.

  Q. So this document, then, is a document where Tyrone is telling the agency that it's going -- its pregnant leach solution which is going to discharge into groundwater is 1,000 times above the groundwater standard in 3103 for copper; isn't that correct?

  A. That's what it says the discharge could potentially contain. It certainly doesn't say that that's necessarily what's going to enter the groundwater.

  Q. Okay.

  The next item listed is Fe.

  Is that iron?

  A. That's correct.

  Q. And does that indicate that 1,000 parts per million of iron is in the pregnant leach solution?

  A. Yes, it does.
Q. And do you know what the standard is for iron?
A. I'm looking at the regulations, and I see that it is 1 milligram per liter.
Q. So again, this is -- this is telling the agency that the pregnant leach solution which is being discharged is 1,000 times above the then existing standard for iron, correct?
A. That's correct.
Q. And let's talk about the next item on the table. What does that refer to, the Mn?
A. Manganese.
Q. And does that indicate that there's going to be 1,500 parts per million, or milligrams per liter, in the pregnant leach solution that's going to be discharged from the Number 2 Leach Stockpile?
A. Yes, it does.
Q. What is the standard for manganese?
A. The standard is -- according to the 3103 is .2 milligrams per liter.
Q. And has it always -- has the manganese standard always been .2?
So point -- let me withdraw --
A. I don't recall.
Q. Let me withdraw that question.
.2 is obviously less than 1 part per million, correct?

A. Yes.

Q. So this is several times -- what's listed on the table on page 8 for manganese is several thousand times higher than the existing standard, correct?

A. That's correct.

Q. And why don't you go on and read the parameter and the parts per million for the three that I have highlighted on this table.

A. The three that you've highlighted, the first one is sulfate, the concentration predicted in the PLS in the table is 25,000 parts per million, and the raffinate is 27,000 parts per million.

The next parameter is total dissolved solids, and the concentration predicted in the PLS is 37,000 ppm, and in the raffinate 37,000 ppm.

And for -- the next parameter is pH, and for the pregnant leach solution is listed as 2.4, and 1.9 for the raffinate.

Q. And what -- do you know what the standard is for sulfate?

A. It is 6 -- I believe -- I'm -- yes.

600 milligrams per liter.

Q. Do you know what the standard is for TDS?
A. It's 1,000 milligrams per liter.
Q. And do you know what the range -- acceptable range for pH is?
A. 6 to 9.
Q. And you're referring in those -- in this instance to the standards set forth in the 3103 standards of the -- of the Water Quality Control Commission?
A. Yes. That's what I'm referring to.
Q. Okay. Let's look at page 9 in tab 12.
Is the highlighted portion there essentially telling the agency that it's the pregnant leach solution that can potentially enter the groundwater?
A. That's what -- that's what it says. Yes.
Q. And the pregnant leach solution, for example, that's coming from the pregnant leach solution pond we discussed is coming at the rate of approximately 1.2 million gallons per year, as reflected on page 4 of this document; isn't that right?
A. And where are you looking? Did you say 1.4 million --
Q. 1.2 million. I'm looking under Pregnant Leach Solution Pond Below the Dump, at the middle of page 4 in the discharge plan, at tab 12 of Tyrone Exhibit 921.
A. Yes. That's correct.
Q. Now, is it your understanding that a discharge plan in which these volumes of pregnant leach solution, -- with these levels of constituents for copper, iron, manganese, sulfate, TDS and pH, is something that the agency could approve if it believed that the area immediately under the facilities were places of withdrawal of water for present or reasonably foreseeable future use?

A. Yes. I -- I do think that the -- the Department could approve a discharge permit for discharges of that concentration if the groundwater underneath is considered a place of withdrawal.

Q. And could you explain that, please?

A. Well, if -- it's going to be in part based on the demonstrations by the applicant. I mean, clearly, as I said before, when these discharges -- looking back in history, I think the record shows pretty strongly that the -- the contamination that resulted from this discharge was far more than was ever anticipated.

You're in a fractured system. You really don't -- you know, there really wasn't a good knowledge about how this particular sort of discharge would impact groundwater.

And getting back to your question, I mean, clearly if -- today we know that if we have liners and
things like that below stockpiles, that that can, you
know, control this sort of source of contamination.
These are things that we didn't have as much knowledge
about in the past.
And certainly, as I said before, Phelps Dodge
requested this kind of a discharge for many of the leach
stockpiles, and not so much with this early permit
application, but with -- certainly with most of the
discharge permit applications, was very confident that
there would be minimal impacts to groundwater from this
very sort of discharge.
Q. Is it your testimony that when Discharge Plan
166 was approved on July 20th, 1981, that the agency at
that time considered the groundwater immediately beneath
the pregnant leach solution pond, where 1.2 million
gallons per year were being discharged -- that the
agency believed that the water beneath that facility was
a place of withdrawal of water for present or reasonably
foreseeable future use?
A. Yes.
Q. I'd like to turn a little farther into this
document, number 12, tab 12, to the next place where I
have highlighting, which is on page 19.
Do you see where I'm looking?
A. Yes.
Q. And could you please read the highlighted portions on page 19 and 20, not including the conclusion on page 20?

A. "Contingency Plan.

"Subsequent water users will be protected in the following manner:

"Monitoring" -- did you say to just read the highlighted --

Q. Well, I'm sorry. You can read that whole section.

A. It's not all highlighted, that sentence.

Q. That's fine.

A. "Monitoring of wells 6-4, 6-5, 4-1, 4-2, 4-3, 4-4 and 4-5 will be conducted and described -- as described previously."

Q. And then paragraph C.

A. "An analysis will be made of the analytical results of the monitoring to detect any increase in the concentration of any of the EID-required constituents."

Q. Okay. That was paragraph B. Could you go ahead and read paragraph C, which I've highlighted?

A. "Phelps Dodge will begin the following upon chemical evidence indicating a consistent increase in concentrations beyond that expected due to normal
analytical error and natural geochemical variation in
aquifer water quality."

Q. And then go ahead and read the four
paragraphs, please.

A. "A feasibility study will be made to determine
the method which will be used to prevent harm to
subsequent users."

Q. 2 -- was --

Q. If you'd like, I can go ahead and read it.
The second one is, "Based upon the method
selected, an engineering study will be conducted to
determine how the method will be implemented," correct?

A. Yes.

Q. The third paragraph -- numbered paragraph
says, "Upon completion of the engineering study, any
construction required to implement the method will be
done," correct?

A. Yes.

Q. And 4 says, "The scheduling of the above steps
1, 2, and 3 will be such that they will be completed,
and operation of the method will commence before any
subsequent user is harmed," correct?

A. Yes, that's correct.

Q. So again, is this -- is this document telling
the agency that essentially monitoring will be conducted...
at various locations and that if there are certain
increases that various studies will be done to determine
how best to prevent harm to subsequent users?

A. Well, this is what this contingency plan is
proposing, but there were several changes to this --
this contingency plan was never actually implemented in
practice, and I believe there was other correspondence
regarding the contingency plan.

Q. Okay.

A. But yes, in answer to your question, this is
the proposal.

Q. And is there -- are you aware of other --
other documents in the administrative record that change
the basic concept of monitoring and then implementing a
contingency plan if certain things show up in the
monitoring wells?

A. I recall that there is other correspondence in
the file. I wouldn't be able to sit here and tell you
the dates of those communications.

Q. Okay.

Let's turn to tab 13, please.

Is this a letter from a Phelps Dodge Tyrone
manager to Albert Dye dated June 26, 1981?

A. Yes, it is.

Q. And in the first paragraph of this letter,
does it reflect that a meeting was held between Phelps Dodge and agency representatives concerning the Number 2 Leach system discharge plan?

A. Yes.

Q. And go ahead and read the part of that paragraph after the -- after the comma where it starts "the question."

Do you see where I'm looking?

A. After the comma.

Q. "The question was raised by you on which groundwater" --

A. Oh, okay.

Q. -- "geographically, the proposed plan intends to protect."

Do you see where I'm reading?

A. Yes.

Q. Okay.

A. Well, wait a minute. Okay.

Q. First paragraph.

A. So starting with "In order." Okay. I thought you meant there was a question somehow in there.

"In order to clarify this matter, we believe that the discharge plan should protect the groundwater of subsequent users, and that those users are our neighbors using groundwater in the predicted path of
contaminant flow from the Number 2 leach system. Since this path of contaminant flow is to the Mangas Valley and since an existing discharge plan covers sources presently discharging to the Mangas Valley flow system, the subsequent users being protected by this plan will also be protected from a discharge from the Number 2 leach system. The subsequent users, therefore, are our neighbors to the north in the Mangas Valley.

"As the" --

Q. So -- if I could stop you there.

So looking at Exhibit 13, what's your understanding of what Tyrone is telling the agency is the -- are the subsequent users in the Mangas Valley and the predicted flow of contaminants from the area of the 166 discharge site?

A. Well, the letter indicates that Phelps Dodge considers subsequent users to be, I guess, users to the north in the Mangas Valley, and at that time, groundwater flow from DP-166 was to the north towards the Mangas Valley.

Q. Okay.

And could you read the next paragraph of the June 26 letter from the Tyrone manager to Mr. Dye?

A. "As the Tyrone Mine is deepened, we wouldn't expect seepage from the leach system to reach the Mangas
flow system because of the effect that dewatering the
mine will have on intercepting seepage and changing the
groundwater gradient to achieve groundwater flow only
into the mine."

Q. Now, does that paragraph -- do you understand
that paragraph to be referring to the open pit capture
zone concept that -- essentially that seepage at a
certain point -- once the mine is deepened, seepage is
going to flow toward the mine rather than down the
Mangas Valley?

A. Well, certainly Tyrone expected that as they
deepened the Main Pit, that groundwater would be -- in
the area of the Number 2 Leach Stockpile would begin to
flow towards the Main Pit.

There was -- perhaps not all of the flow. I
mean, that would be a function really of how -- how deep
the pit was and -- but -- so I wouldn't say all of it,
but at the time it was expected that groundwater would
start moving towards the pit.

Q. And could you read the next paragraph, please?

A. "Our intent relative to the contingency and
monitoring sections in the proposed plan was that the
monitoring system would only trigger additional
monitoring at wells located in the flow system downgrade
from the mine. This monitoring will show how the mine
dewatering system is operating to prevent contaminant
flow past the mine.

"Action to protect subsequent users from harm
would be made on the same basis of the analyses of
samples obtained from wells 14 and 15 in the Mangas
Valley. These two wells also trigger the contingency
plan contained in the Mangas Valley Discharge Plan. As
stated in the plan, we intend to notify the EID of all
actions regarding the contingency plan."

And this is not a proposal that ended up in --
being approved.

Q. Is it your understanding, though, that the
agency agreed with the concept of a monitoring system
that triggers additional monitoring at other locations,
and that would also eventually trigger a contingency
plan?

A. The Department didn't agree with the proposal
in this letter, but in terms of does the Department
agree with monitoring that could trigger other
monitoring, I certainly think that monitoring and the
results of monitoring often triggers other monitoring.

Q. And often triggers contingency plan work,
correct?

A. Yes.

Q. Contingency plan work that is identified up
Pages 2606 – 2609
(intentionally omitted)
not appeal the requirement. They agreed to it. So
whether or not that would be conceding -- or Phelps
Dodge felt that it conceded, I don't -- I don't know.
I'm only looking at the record and what did, in fact,
happen at the site.

Q. In your review of the record, did you find any
document in connection with any operational discharge
plan that stated the Department's position that water
immediately between -- or in -- excuse me -- beneath a
portion of the Tyrone Mine facility was water at a place
of withdrawal of water for present or reasonably
foreseeable future use?

That was not very artfully asked, but -- let
me try again.

Did you find any document where the agency in
writing took the position that the mine site itself was
a place of withdrawal of water for present or reasonably
foreseeable future use?

A. In those words in one document, discussing the
entire mine site, no. I believe that the -- the record
as a whole -- you know, the body of the record as a
whole in general is indicative of that the Tyrone Mine
was considered a place of withdrawal.

Q. Did you, in your review of the Tyrone
operational discharge plan files at any time, see a
document that took issue with statements -- the multiple statements we've seen in these documents about subsequent users and the fact that the subsequent users were neighbors to the north, down the Mangas Valley?

A. I don't recall any documents arguing about the term "subsequent users," but the record -- in almost every permit that I can recall, certainly the majority, Phelps Dodge's initial -- the monitoring plan that would first, you know, be put forth and contingency efforts that would be a result if there was contamination were -- were much farther away from the sources of contamination than what the Department believed was appropriate.

And so there was a lot of correspondence and back and forth, and which for some permits, I mean, months or years of discussing wanting monitoring to be brought closer to the source of potential contamination.

So that's not arguing necessarily about the term "subsequent user," but it certainly shows that the Department was very concerned with groundwater, you know, at the source and immediately adjacent to the source of contamination.

Q. Fair enough.

And these documents also reflect that Phelps Dodge was very concerned about water at the source;
isn't that correct?

A. Which -- which documents?

Q. Well, for example, the documents at tab 15, where it indicates that Tyrone intends to dewater the mine and intercept seepage for as long as necessary to return the quality at the wells between the Number 2 Leach Dump and the mine to preleaching conditions. That reflects the company shared the concern of the agency about contamination at the site, does it not?

A. Well, this letter was written in response to the Department requiring Phelps Dodge to abate the groundwater contamination and come up with a plan for abating the contamination at the leach stockpile.

Q. And it's your --

A. I --

MS. FOX: Hey --

Q. (BY MR. BUTZIER) Were you finished?

A. I certainly wouldn't want to say that Phelps Dodge wasn't concerned. I'm just saying that this letter is in response to the Department requiring that they clean up the contamination.

Q. And the reason the Department was requiring the cleanup of contamination, in your opinion, is because the Department viewed all groundwater at the
site was a place of withdrawal of water for present or
reasonably foreseeable future use?

A. Yes.

Q. Okay.

Did you, in your review before preparing your
testimony in this case -- did you review the discharge
plan file for Discharge Plan 286?

A. Yes. I didn't -- I reviewed the majority of
the file, most of the file.

Q. And could you identify on NMED Exhibit 13 the
area covered by 286?

A. Again, that's the Number 3 Leach Stockpile
system, located at the northern portion of the main mine
complex.

Q. And actually, your Exhibit 13 identifies that
as the 3A system, correct?

A. That's correct.

Q. Could you explain why you're now referring to
that as the Number 3 system?

A. It -- that leach stockpile used to be referred
to as the Number 3 Leach system, and over time, at
several of these leach stockpiles or waste rock piles,
Tyrone has changed, you know, the terminology here and
there. And so that's -- but the discharge permit, I
believe, still refers to it as the Number 3 Leach
Pages 2614 – 2622
(intentionally omitted)
MR. GLASS: All right. We'll allow the objection to stand and ask Mr. Butzier to refrain from questions asking Ms. Menetrey to read Mr. Souder's mind some 20, 30 years ago and maybe stick to the plain meaning -- the plain meaning of the language and her interpretation therein.

MR. BUTZIER: Okay. Thank you.

Q. Does this letter of July 26, 1983, state that monitoring wells which would trigger implementation of a contingency plan will need to be located fairly close to the leach dump in order to identify contamination at an early enough time that corrective action is feasible?

A. Yes, it does state that.

Q. And that's a letter from the agency in 1983, correct?

A. That's correct.

Q. I'd like you to turn to tab 18, please. Is this an October 3, 1983, letter from Karl Souder and Albert Dye to Richard Rhoades at Tyrone?

A. Yes, it is.

Q. And is this part of the back and forth that you talked about lasting for over a year in relation to the discharge plan for the Number 3 Stockpile?

A. Yes, it appears to be.

Q. And could you read the highlighted parts of
Pages 2624 – 2651
(intentionally omitted)
groundwater discharge plan program, and it's a simple question.

I'm asking if there's a single document she's reviewed -- she's testified as to a 30-year history. She's only been at the agency for something considerably less than that 30 years, and yet she's offering opinions here about a 30-year history. And my question is directed to the part of that history in which she must have formed her opinion based on review of documents since she wasn't there.

MR. GLASS: Hmm. Well, given the fact that I think we're observing an evolution of perception over a period of some time in the Department, I'm going to overrule the objection and ask you to answer the question.

MS. MENETREY: Could you repeat the question, please?

MR. BUTZIER: Could you read it back?

Sorry.

(Record read.)

MS. MENETREY: Well, again, I think -- I mean, I believe that there's a lot of documents that indicate that the place of withdrawal is inside -- and again, in the first 10 years of permitting history, there was no MMD permit boundary, and so it's -- there wouldn't have
been any correspondence relating to that.

But again, clearly the requirement under
DP-166 to clean up and abate groundwater within and, you
know, beneath the mine and within the area of the leach
dump is, to me, a clear document and indication that
that area was considered a place of withdrawal. There
is other correspondence, as well.

And again, the situation at the Tyrone Mine
was that in those early years there wasn't very much
groundwater contamination at the site. The brunt of --
I mean, after the number -- DP-166 contamination
occurred -- and again, that was in -- around 1985, but
after that -- and our action was to require that
groundwater get cleaned up.

But really there wasn't any other groundwater
contamination detected until you get into the '90s, the
early '90s, when groundwater contamination was detected
at the tailing impoundments. And so, you know -- and
then the mid '90s was when we started detecting the
contamination over on the east side of the mine, which
was very extensive -- or actually it would have been the
early '90s also for the Number 3 Stockpile.

So, you know, when you start talking about the
first 10 years of the record, there wasn't a lot of
activity with regard to contamination in the record, but
certainly when it did occur, the Department's actions
were to require that that contamination be cleaned up.

And I know that there is also some
correspondence in some of the back and forth, especially
with regard to monitoring. I recall a 1985 letter
regarding the Number 2A Leach Stockpile, where -- I
believe it was Ron Conrad, who was very specific --
there was a plan proposed by Tyrone to have monitoring,
you know, well away from the dump area, and in that
letter it was very specific that standards had to be
met.

If there's monitoring wells adjacent to the
dump and they could contaminate, you have to meet
standards here.

So I think that there's quite a bit of
documentation. It didn't apply to the MMD permit
boundary, but -- that's my answer.

Q. (BY MR. BUTZIER) And it also didn't apply to
the specific issue of place of withdrawal of water for
present or reasonably foreseeable future use, did it?

You've identified one -- one document in your
answer with any kind of specificity, and that document
does not specifically address the issue of place of
withdrawal of water for present or reasonably
foreseeable future use, does it?
Pages 2655 – 2727
(intentionally omitted)