

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

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



WQCC 12-01 (R)

New Mexico Environment Department,
Petitioner.

**ORDER ON ATTORNEY GENERAL'S MOTION TO ADMIT RECORD FROM
TYRONE PERMIT APPEAL INTO RECORD PROPER**

This matter comes before the Hearing Officer on a Motion to Admit the Record from the Tyrone Permit Appeal into the Record Proper in this proceeding, filed November 2, 2012 by the Attorney General. The request includes twenty-four volumes of hearing transcripts, all admitted exhibits, and the Water Quality Control Commission's February 4, 2009 Decision and Order. The New Mexico Environment Department (NMED) filed a Response opposing the Motion on November 19, 2012; the Attorney General filed a Reply on November 30, 2012.

The Attorney General sets out the procedural history of the Tyrone discharge permit appeal, and notes that the Commission "has already made factual and legal determinations, based on an extensive record, on many of the same factual and legal issues raised by the Proposed Copper Mine Rule...." These issues included a determination of whether the Tyrone Mine site is a "place of withdrawal of water for present or reasonably foreseeable future use."

NMED responds that the Tyrone matter was an appeal of an individual discharge permit, while this matter is a petition for a rulemaking of statewide application. NMED also argues that the admission of the entire record would result in confusion and a waste of time.

The Attorney General replies that the Commission was given specific direction by the Court of Appeals, chose to establish criteria for all copper mines as part of its Tyrone decision, and that the technically expert Commission will not be confused.

The Attorney General has set out a strong basis for the admission of the Commission's February 4, 2009 Decision and Order. Some of the factual and legal determinations made in that matter are the same or similar to the factual and legal determinations that the Commission will be asked to make in this matter. To the extent that the Petition in this rulemaking presents an invitation or opportunity for the Commission to reach different conclusions about "places of withdrawal of water for present or reasonably foreseeable future use" than it did in 2009, the Commission will have to confront that decision and articulate a basis for any significant change in course.

But the "abundance of evidence" supporting the Tyrone decision is reflected on its face, and inclusion of the entirety of that evidence prior to this rulemaking hearing, without any winnowing, and without presentation by witnesses subject to cross-examination, may well result in confusion and the unnecessary expenditure of Commission time and resources.

With the exception of the Commission's Decision and Order of February 4, 2009, the Motion is denied.



Felicia L. Orth, Hearing Officer