

STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION



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

WQCC 12-01 (R)

New Mexico Environment Department,
Petitioner.

NEW MEXICO ENVIRONMENT DEPARTMENT'S
RESPONSE TO MOTIONS TO STRIKE NOTICE OF OBJECTION
TO WILLIAM C. OLSON'S
NOTICE OF INTENT TO PRESENT TECHNICAL TESTIMONY

The New Mexico Environment Department (“NMED” or “Department”) hereby submits this Response to both the Attorney General’s and Amigos Bravos’ Motions to Strike the Department’s Notice of Objection to William C. Olson’s Intent to Present Technical Testimony. The Department opposes the motions, and requests that they be denied.

The Department intentionally refrained from presenting specific arguments or evidence regarding a breach of contract in the Objection because the Copper Rule proceeding is not the proper forum in which to decide this issue. The purpose of the Department’s notice was twofold, to inform the Commission of the Department’s perceived violation of a professional services agreement by Mr. Olson, so that the Commission may weigh his testimony in this regard, and to preserve its objections on the record. The notice provided to the Commission of a prior relationship and the conflict it gives rise to is entirely appropriate.

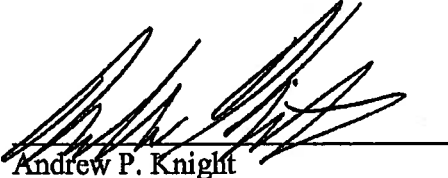
The Attorney General cites no legal authority for the proposition that a pleading such as the Objection is not a proper pleading. See AG’s Motion to Strike, ¶ 7 (“A notice stating such dissatisfaction is not a proper pleading”). The Objection is not frivolous as it provides important information to the Commission regarding the prior contractual relationship between Mr. Olson

and the Department. Mr. Olson served as the Department's contractor from June 1 of 2012 through November 30, 2012. Mr. Olson accepted payment from the Department for services rendered under the contract. The Department was surprised by the filing of Mr. Olson's NOI. Mr. Olson's individual interest conflicts with the interests of the Department as presented in the proposed Copper Rule. Further, Mr. Olson participated in preparing the Department's expert witness who was retained in lieu of Mr. Olson.

The fact that Mr. Olson was retained as an expert consultant by the Department, and had access to confidential information while serving in that capacity, is undisputed. On this basis alone, the Objection is proper. The AG's citation to Rule 1-007.1.C in paragraph 8 is inapposite because the Objection is not a motion, and does not seek any form of relief. The AG's citation to the Commission's *Guidelines* in paragraph 9 is likewise inapplicable because the Objection is not evidence, as the AG acknowledges in footnote 1 on page 4 of the Motion to Strike. It is adequate and appropriate that the Department notify the Commission of the perceived conflict of interest of Mr. Olson and preserve its objection for the record. The notification should stand.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served by email on the following on this 28th day of March, 2013:

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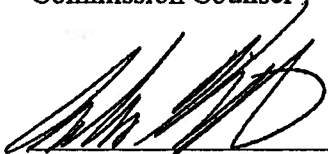
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