

**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 SEVERAL MOTIONS AND
ADDITIONAL PROCEDURAL MATTERS**

The Hearing Officer and Counsel for all Parties participated in a teleconference on March 29, 2013, conducted for argument on several recently filed motions and the discussion of additional procedural matters shortly prior to hearing. The following paragraphs reflect the decisions made during the teleconference, by order or agreement.

1. The Attorney General's Motion to Strike Brack Exhibit 4--a Video offered by Freeport-McMoRan (FMI), filed March 25, 2013, was withdrawn following consideration of the Response to the Motion from FMI filed March 28, 2013.
2. FMI's Motion to Withdraw Testimony and File Substitute, Condensed Testimony, filed in two parts on March 15 (the Motion) and March 22 (the substitute testimony), is denied for the reasons set out in the Attorney General's Response, the Supplement to that Response and argument from other Counsel during the teleconference. The revisions to the testimony originally filed are not insubstantial; and are filed a month after the deadline set for every Party, precluding an opportunity for rebuttal or sufficient time to prepare cross-examination.

3. The two Motions filed March 25, 2013 by the New Mexico Environment Department (NMED) to Exclude Exhibits of Written Testimony and Transcripts from Prior Permit Appeal Proceedings submitted by both the Attorney General and by William Olson are denied for the reasons set out in the Responses filed by the Attorney General and Mr. Olson. The Attorney General's witness and Mr. Olson are relying on these excerpts of relevant testimony for their own opinions, and will stand for cross-examination during this rulemaking. Although the transcripts offered are excerpts, NMED declined an invitation to compel the addition of related cross-examination to the excerpts.
4. NMED filed a "Notice of Objection to William Olson's Notice of Intent to Present Technical Testimony" on March 12, 2013. The Attorney General's Motion to Strike NMED's Notice of Objection, filed March 15, and Amigos Bravos' Motion to Strike NMED's Notice of Objection, filed March 19, 2013, are granted for the reasons set out in the Motions and argument from Counsel and Mr. Olson during the teleconference. The Commission's Pleading File in a rulemaking is not the appropriate place for the airing of a potential contract dispute. The Hearing Officer will set up an additional time to discuss with Counsel the question of whether the topic may be properly raised during Olson's cross-examination.

5. Order of presentation: As Petitioner, NMED would generally present its witnesses first, but neither of its witnesses are available on April 9. FMI offered to present Mr. Brack on April 9, and if Mr. Brack is not testifying, the Hearing Officer has asked FMI to consider presenting another witness or witnesses. FMI will notify the other Parties and the Hearing Officer as to its plans for April 9 by close of business April 3. FMI will follow the Department and will present three of its witnesses (Eastep, Shelley, Lande) as a panel for cross-examination. The Mining Association will follow FMI. The Attorney General, Amigos Bravos, the Gila Resources Information Project and Turner Ranch Properties, and William Olson will generally present in that order following the Mining Association, except that witness availability, especially for those traveling from out of state, may result in adjustments.
6. The Hearing Officer declined NMED's invitation to impose time limits on cross-examination, but will limit cross-examination that is repetitive or otherwise improper.
7. The Hearing Officer still plans to allow sur-rebuttal within her discretion, on a case-by-case basis, consistent with the original Procedural Order.
8. Amigos Bravos requests leave to present one rebuttal witness by telephone. Although this remains a possibility, if necessary, the Hearing Officer and other Counsel are agreed that a personal

appearance is preferable, even if that personal appearance must be scheduled in advance and might result in an out-of-order presentation.

9. Oral argument on the early filed motions and briefs relating to the Commission's authority and requests to remand or dismiss the Petition will be accepted from each Party on April 9 prior to the beginning of the evidentiary hearing. The order of argument will follow the order of presentation set out above. Each Party will be strictly limited to argument of 10 minutes, followed by an opportunity for Commissioners to ask questions.
10. Opening statements may be made at the beginning of the hearing or at the beginning of a Party's presentation, and may not exceed fifteen minutes.
11. Public comment: The Hearing Officer has scheduled three times to accept non-technical public comment: the evenings of April 10 and 11 in Apodaca Hall of the Old PERA Building in Santa Fe and the late afternoon/early evening of May 3 in the Auditorium of Western New Mexico University in Silver City. Public comment will also be accepted during the day in the weeks of April 16, April 23 and April 30 as necessary and at times intended to minimize the interruptions in the testimony of the technical witnesses (first thing in the morning, late in the day or immediately before or after lunch). The Hearing Officer invites those interested to make contact if they desire a specific time, and will share each day's known plans with the Parties.

12. In the event the hearing pace appears too slow to finish by May 3, the Hearing Officer may lengthen the hearing day or impose time limits on commenters. This would occur only following discussion with the Parties and the Commissioners.
13. The hearing will be webcast from Room 307 of the Capitol; a link will be posted on the Commission's webpage shortly before the hearing begins.

A handwritten signature in black ink, appearing to read "Felicia L. Orth". The signature is written in a cursive style with a large initial "F" and "O".

Felicia L. Orth, Hearing Officer