

MINUTES
WATER QUALITY APPEALS BOARD MEETING
100 N. 15th Avenue, Suite 103
Monday February 13, 2017

IN ATTENDANCE: Scott S. Wakefield, Chairman; Gail M. Clement (telephonically), Vice Chair;
Fred E. Brinker, P.E., Member

STAFF IN ATTENDANCE: Lisa Kautz & Connie Castillo, Clerk of the Board; Michael Hrnicek Assistant
Attorney General from the Solicitor General's Office of the Attorney
General's Office, Counsel for the Board

MINUTES:

1. The regular meeting of the Water Quality Appeals Board (WQAB) was called to order by Scott Wakefield at 10:03 A.M., Monday, February 13, 2017.
2. **Attendance for Meeting** – Alex B. Ritchie & E. Koranten Attorney General's Office representing San Carlos Apache Tribe; John Kreig, President Save Tonto National Forest; Andy Kuester, Swathi Kasarurueni; Roger Featherstone, Director AZ Mining Reform Coalition; Curtis Cox & Brad Pollock, Assistant Attorney Generals, Attorneys for ADEQ; Rebecca Barnes, Sherri Fendri; Katherine E. May, Perkins Coie, Attorney for Resolution Copper Mining, LLC
3. **17-001 San Carlos Apache Tribe, Arizona Mining Reform Coalition, Concerned Citizens and Retired Miners Coalition, and Save Tonto National Forest Notice of Appeal of Agency Decision RE: Resolution Copper Mining AZPDES Permit No. AZ0020389.** The Board will discuss and decide on hearing this new appeal or submit to the Office of Administrative Hearing. The Board may discuss and take action on setting deadlines, hearing dates and other procedural matters.

Chairman Wakefield asks the Board to consider the recent Motion to Consolidate.

Chairman Wakefield notes that a representative of Concerned Citizens and Retired Miners Coalition is not present; however, Roger Featherstone will be speaking on their behalf.

Chairman Wakefield provides an explanation on the Motion to Consolidate. There are no objections by any of the parties.

Mr. Brinker moves to grant the motion to consolidate. Motion passes unanimously.

Chairman Wakefield asks the Board to consider the Motion to Intervene from Resolution Copper, Inc.

Ms. May indicates that they intend to intervene on both issues. There are no objections by any of the parties.

Mr. Brinker moves to grant the motion, a vote is held. Motion passes unanimously.

Chairman Wakefield asks the Board to consider ADEQ's Motion to Exclude Public Participation Issues.

Mr. Featherstone questions as to what Resolution Copper is allowed to intervene in with regards to new issues.

Chairman Wakefield provides clarification as to the intervention by Resolution Copper, Inc.

Mr. Ritchie states that Mr. Featherstone has raised some issues to deal with later procedurally regarding confined responses to eliminate duplication. The attorneys can work together to find a reasonable process.

Mr. Brinker asks Mr. Ritchie if there are issues beyond what have been submitted in previous briefs.

Mr. Ritchie states that they have not received all the documents so that is unclear. Unless there's something in the documents that they have not seen. Mr. Ritchie states that they have received a list of documents and some of those they have not had access to yet so they will need additional time. There were certain documents that ADEQ has not released as part of the permitting process. Mr. Ritchie further states that as part of the discovery process they would like to see all the documents.

Mr. Brinker states to Mr. Ritchie that the two groups have filed documents stating there are five or six issues. Based on this discussion he asks Mr. Ritchie to clarify if he is suggesting there may be more issues and they just don't know what they are yet.

Mr. Ritchie states yes to Mr. Brinker's questions.

Chairman Wakefield asks the Board to address the Motion to Exclude Public Participation Issues. Chairman Wakefield further clarifies with Mr. Featherstone that he has not received the motion or the updated agenda item.

Mr. Featherstone states that he did not receive the updated agenda, but did receive ADEQ's motion. Mr. Featherstone stated that he wasn't certain if something beside the updated agenda had been filed. Mr. Featherstone further states that he didn't know who would be hearing the issue (Water Quality Appeals Board "WQAB" or Office of Administrative Hearings "OAH") so he did not know who to respond to.

Chairman Wakefield asks if there are any time limits under to rules for the Coalition to file a response to ADEQ.

Mr. Pollock clarifies that Rule R217-112 Subsection B gives the response five days after service and then two days to reply.

Chairman Wakefield asks Mr. Ritchie if he has filed a response to the Motion To Exclude Public Participation Issues, and Mr. Ritchie states that he has not responded however he states that they have no objection.

Chairman Wakefield asks Mr. Featherstone if the parties he is representing have objections to the Motion to Exclude Public Participation Issues.

Mr. Featherstone states the Motion was served on him however there was no mention of a timeline to respond, and it was further dated January 34th.

Chairman Wakefield asks Mr. Kreig if Save Tonto National Forest have any objections to the motion.

Mr. Kreig states yes, they object and did receive a copy but it was dated January 34th and there was no reference to when a response needed to be filed.

Mr. Pollock clarifies that although the date stamp was January 34th, the date further in the document did state February 3rd and it was delivered to each of the parties the same date it was filed.

Chairman Wakefield asks the Board if there is a motion to consider this motion, and Ms. Clement states no.

Mr. Brinker states that he would like to further discuss the matter with the attorney for the Board in Executive Session.

Chairman Wakefield asks the parties if they would like to inform them of anything regarding procedure of whether they should be acting on the motion.

Mr. Pollock states that ADEQ is interested in making sure the appeals continue to progress and don't stagnate. The rules are evident; however, an oral response would be acceptable. ADEQ does not object to an oral response presented now.

Mr. Thomas on behalf of Resolution Copper Inc. states that they would be okay with an oral response in the meeting as well.

Mr. Ritchie does not object to oral response.

Mr. Featherstone states that the understanding was to make a decision on which Board would be handling the appeal so there was no need for a flurry of paperwork.

Chairman Wakefield clarifies that if the Board sends the matter to OAH it is heard on their behalf. Ultimately the Board would act on the matter. OAH will function to hear evidence, make recommendations and the Board considers that recommendation.

Mr. Featherstone states that his objections would be that the Public Meetings violated R18-1-402.

Chairman Wakefield asks Mr. Featherstone if he claims that the Board does not have jurisdiction to hear the issues in the Motion To Exclude Public Participation Issues.

Mr. Featherstone states that it is in their original comments and is the basis of the list of things being appealed to. Mr. Featherstone further states that it would be improper to exclude.

Chairman Wakefield asks Mr. Kreig for his oral response.

Mr. Kreig states that his home is in Queen Valley and the water is going to be dumped in Queen Creek. Queen Valley gets its water from Queen Creek drainage. Some of the citizens may want to voice their concerns because the same water from Queen Creek goes to Florence.

Chairman Wakefield asks Mr. Kreig his position on to whether it is within the jurisdiction of the Board.

Mr. Krieg states he is unsure, he is present to make his position known.

Chairman Wakefield states that Mr. Brinker has asked for legal advice and asks for a motion to adjourn into Executive Session

Mr. Brinker motions, Ms. Clement seconds. The motion to Executive Session passes at 10:23A.M.

Chairman Wakefield calls back to order Public Session at 10:41A.M.

Mr. Brinker states that he is concerned that the Coalition folks did not get a chance to submit something in writing to respond. He further states that he thinks the Board should allow them until the end of the week. Mr. Brinker states that the appellants need to comment on whether they think the Board has jurisdiction because it is part of the motion. Mr. Brinker also asks the appellants be specific and state what was deficient.

Ms. Clement agrees that it's important to allow the public the opportunity to fully participate and she is in support of Mr. Brinker's suggestion.

Chairman Wakefield asks the Board what time frame is appropriate for the Coalition to respond. Discussion is held and it is determined that close of business Friday the 17th would be appropriate and then ADEQ will have the opportunity to reply as well by the following Friday the 24th.

Chairman Wakefield asks for a second to Mr. Brinker's motion with amendments that regard for a Friday response from the Coalition and then the following Friday a reply from ADEQ on the Motion To Exclude Public Participation Issues.

Ms. Clement seconds the motion and the motion passes unanimously.

Chairman Wakefield asks the Board if they would like to hear this appeal or send it to the Office of Administrative Hearings on their behalf.

Mr. Ritchie states that they would like to file an Amended Notice of Appeal to comply with technical requirements contained in the regulation.

Mr. Pollock states that if there are any substantive changes to the appeal that ADEQ would be objecting to them. If the appellants would like to clarify issues that they have already raised for appeal it would be welcomed. Anything beyond that or expanding the scope or including new issues would be objected to.

Chairman Wakefield asks Mr. Ritchie to file an Amended Notice of Appeal by Friday the 17th, and Mr. Ritchie states that he can comply.

Chairman Wakefield states that since there are procedural issues that need to be worked through before deciding if the Board will be hearing the appeal or OAH it would be prudent to not make the decision and to consider it for the March agenda in order to consider various motions and responses that still have outstanding issues.

Chairman Wakefield asks if there is further discussion needed by the Board, and Ms. Clement confirms that there is not.

Chairman Wakefield asks for a motion to adjourn.

Mr. Fred Brinker moves to adjourn, and Chairman Wakefield seconds the motion.

Future Agenda Items. There were no future items for discussion.

4. Mr. Wakefield adjourned the meeting at 11:03 A.M.

ALL WQAB MEETINGS ARE AVAILABLE ON AUDIO TAPE



Submitted by Lisa Kautz, Clerk
Water Quality Appeals Board

3-6-17

Date



Approval Signature by Chairperson
Water Quality Appeal Board

3/6/17

Date