STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION
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CONSTITUENT AGENCIES:

Environment Department
State Engineer & Interstate Stream Commission
Game and Fish Department
Oil Conservation Division
Department of Agriculture
State Parks Division
Soil and Water Conservation Commission
Bureau of Mines and Mineral Resources
Members-at-Large

Minutes of the New Mexico Water Quality Control Commission Meeting August 10, 1999

The New Mexico Water Quality Control Commission (WQCC) meeting was held on August 10, 1999 at 9:00 a.m. in the State Capitol Building, Room 321, Old Santa Fe Trail and Paseo de Peralta, Santa Fe, New Mexico.

Members present:

Paul Ritzma	WQCC Acting Chair, Environment Department (NMED)
Pat Turney	State Engineer & Interstate Stream Commission
Ricardo Rel	Department of Agriculture
Howard Hutchinson	Soil and Water Conservation Commission
David Johnson	State Parks Division
Jack Kelly	Department of Game and Fish
Bill Olson	Oil Conservation Division
Alberto Gutierrez	Member-at-Large
Paul Gutierrez	Member-at-Large

Members absent:

Lynn Brandvold	Bureau of Mines and Mineral Resources
Irene Lee	Member-at-Large

Others present:

Tamella Gonzales	WQCC Administrator
Daniel Rubin	WQCC Counsel
David Hogge	NMED
Kelly Bitner	Neptune Oil Company
James Davis	NMED
Charlie Nylander	Los Alamos National Laboratory
Marcy Leavitt	NMED
Greg Lewis	NMED
Mike Saladen	Los Alamos National Laboratory
Maxine Goad	Citizen
Alex Puglisi	New Mexico Municipal League
Bill Landin	City of Santa Fe
Bill Brancard	Sutin, Thayer & Browne
Erik Galloway	SWQB/NMED
Gary Schiffmiller	SWQB/NMED
Steven Pierce	SWQB/NMED

Mary Ann McGraw	SWQB/NMED
Cheryl James	AWSD/Operator Certification Advisory Board
Robert George	New Mexico State University
Bob Gay	Self
Hoyt Pattison	Neptune and Co.
Leroy TeCube	Jicarilla Apache Tribe
Eric Ames	Office of General Counsel/NMED
Phil Wardwell	Los Alamos National Lab
Jerry Jacobi	Self
Joe Culbertson, Jr.	NMCGA
Jim White	Jicarilla Apache Tribe
Peter Monahan	SWQB/NMED
Paige Morgan	Santa Fe Watershed Assoc.
Patrick Hanson	SWQB/NMED
Brian O'Connell	Legislative Finance Council
Fidel Lorenzo	Pueblo of Acoma
Randy Kirkpatrick	San Juan Water Commission
Julie Tsatsarios	SWQB/NMED
Willie Lane	US EPA Region 6
Kristen Dors	USEPA/NMED

Acting Chair Paul Ritzma called the meeting to order at 9:05 a.m.

Item 1: Roll call.
Tamella Gonzales, WQCC Administrator, took roll call.

Item 2: Approval of the agenda.
Acting Chair Mr. Ritzma moved to approve the agenda. Mr. Hutchinson seconded the motion. The motion passed unanimously.

Item 3: Review of the June 8, 1999, minutes.
Mr. Gutierrez moved to approve the June 8, 1999, minutes as amended. Mr. Johnson seconded the motion. The motion passed. Mr. Olson abstained.

Item 4: Update on the status of potential Water Quality Act (WQA) amendments for the 2000 legislative session.

Ms. Marcy Leavitt, Chief Groundwater Quality Bureau, gave a brief update on potential amendments to the WQA that were discussed during the last legislative session, but not acted on. Ms. Leavitt stated that in order to provide consensus regarding future amendments to the WQA, the Bureau contacted potentially affected groups and asked them to designate one person to represent them on a workgroup.

The groups represented are the Agricultural Industry, Oil and Gas Industry, Mining Industry, Environmental interests, Municipalities, and the two Constituent Agencies charged with the responsibility of implementing the WQA.

The first issues the group will consider are the duplicative hearing process, public notice procedures, a Commission budget, diversity of public representation, fees and financial assurance for abatement plans and the disposition of penalties. Their first meeting is on August 12, 1999.

Mr. Hutchinson asked if the changes to the WQA discussed by the group will be presented to the Legislature as recommendations from the Department, or will they be presented to the Commission first for review. Ms. Leavitt stated that the group would make the decision on how to present the issues to the Legislature.

Mr. Hutchinson asked if the Department has considered that other Constituent Agencies, not represented by the group, may have an interest in the changes to potential Legislation. Ms. Leavitt stated that the other Agencies are represented on the Commission and would have a chance to review the recommendations if they are brought before them.

Item 5: Update on Hearing Officers Report on 20 NMAC 6.1 – Standards for Interstate and Intrastate Streams.

Mr. Bill Brancard presented the new Hearing Officers Report to the Commission.

Mr. Johnson moved to receive the new Hearing Officers Report and start the 30-day comment period as of August 10, 1999. Mr. Hutchinson seconded the motion. The motion passed unanimously.

Item 6: Discussion and possible action on the reinstatement of Mr. Bob Gay's Utility Operator Certification.

Two members of the Utility Operator's Certification Advisory Board (UOCAB), Ms. Cheryl James and Mr. Robert George joined the Commission for the discussion and possible action on the reinstatement of Mr. Gay's Utility Operator Certification.

Mr. Gay stated that the current regulations were not in effect when his certificate lapsed and believes that the Commission has the authority to make an independent decision in this matter, not being bound by the specific wording of the new regulations. Mr. Gay asked the Commission, based on this fact, to reinstate his Utility Operator Certification.

Mr. Dan Rubin, Counsel for the WQCC, stated that prior to 1993 the regulations did not have a specific requirement for a one-year lapse in certification and did give the Commission leeway in reinstating Utility Operator Certification. In 1993 the regulations were amended to require re-examination after a one-year lapse. The date that Mr. Gay's certification expired, 9/1/95, and the date of the one-year lapse, 9/1/96, fell after the regulation change in 1993 requiring re-examination.
Mr. Rubin stated that in his interpretation of the regulations and after reviewing the Uniform Licensing Act, there is no hearing entitled for failure to renew, when there is a failure to pay the required renewal fee and the Commission does not have the authority to reinstate Mr. Gay's certification. Mr. Rubin recommended that Commission rule on the matter.

Mr. Olson moved to deny Mr. Gay's request for reinstatement of his Utility Operator Certification based on the Commission's lack of authority to reinstate without re-examination.

Mr. A. Gutierrez seconded the motion. The motion passed unanimously.

Item 7: Appointment of members of the Utility Operators Certification Advisory Board.

Mr. Patrick Hanson, Program Manager SWQB, requested that the New Mexico WQCC make appointments to fill three Advisory Board positions which are currently vacant. The Advisory Board voted to recommend the following operators to the Commission for appointment to the Board, they are Charles Barnett, David Richardson, and Bobby Snowden.

Mr. Kelly asked how many people were interviewed. Mr. Hanson stated that 6 or 7 candidates were interviewed. Mr. Kelly stated that he has had the opportunity to work with all three nominees and highly recommends their appointment to the Board.

Mr. Ritzma asked for a brief description of the process used to solicit applicants. Mr. Hanson stated that these positions were solicited by publication in a newsletter sent to certified operators and in a direct mailing to a list of interested parties maintained by the Board. At the Boards scheduled meetings on May 21 and June 25, 1999, the Board reviewed the nomination materials submitted and interviewed the candidates.

Mr. A. Gutierrez asked if two of the candidates were simply renewing their terms, and how many terms could a member serve on the Board. Mr. Hanson stated that two candidates were term renewals and neither the statute nor the regulations state how many terms a member can serve. As a general rule no one serves more than two terms.

Mr. P. Gutierrez moved to accept Charles Barnet, David Richardson and Bobby Snowden to the UOCAB. Mr. Olson seconded the motion. The motion passed unanimously.

Item 8: LAC Minerals (USA) Inc. Petition for Alternative Abatement Standards – Action needed to set Hearing and appoint Hearing Officer.

Ms. Leavitt asked that this item be taken off the agenda. The Department was not prepared to make a recommendation on whether to support LAC's petition.

Item 9: Start 30-day public comment period on the New Mexico Nonpoint Source Management Program (NPSMP).

Mr. Peter Monahan, Program Manager of the Nonpoint Source Section (NPS), and Mary Ann McGraw gave an overview of the NPS Management Program and the start of the 30-day public comment period. The Program covers a period from the date of submission to EPA through 2004. The program includes nine key elements designed to facilitate achievement of program goals and will maximize flexibility for the State to implement nonpoint source pollution abatement. The Department has had prior public involvement through the NPS Task Force. Comments received from the task force were incorporated in the current draft document.

On September 9, 1999, the public comment period will close and on September 14, 1999, a request for adoption of the NPS Management Program will be submitted to the WQCC.

On October 14, 1999, certification will be obtained from the Attorney General and a transmittal letter will be requested from the Governor to EPA. On October 15, 1999, the document will be sent to EPA for approval. The draft document has been published in the Albuquerque Journal, the New Mexican and the Las Cruces Sun News. It is also available on the Department's web site.

Ms. Turney asked why Appendix H, Priority Rating System for Point Source, Nonpoint Source and Brownfields Redevelopment Projects, was missing from the draft document. Mr. Monahan stated that the ranking system and brownfields were referenced in the document. The procedures used by the Department and the Task Force to evaluate projects were left out and, because the rating system is subject to change, the Department and the Task Force agreed to not include it in the draft document.

Mr. Kelly asked how much grant money was needed to operate the program. Mr. Monahan stated that 2.4 million dollars is received from EPA. The NMED uses approximately 600,000 dollars and the Department releases approximately 1.8 million dollars a year through an RFP process.

Mr. A Gutierrez asked if EPA would accept the draft document once it reaches them. Mr. Monahan stated that a draft copy was sent for review to EPA, and their comments were incorporated into the document. EPA should accept it.

Mr. Ritzma asked the Department what it wishes the WQCC to do after the 30-day comment period. Mr. Monahan stated that after all comments have been incorporated, the Department would submit the final version to the WQCC for adoption.

Mr. Monahan stated that the document is not a regulation but a guideline on how to run the State NPS Management Program.
The document is mandatory under §319 of the Clean Water Act (CWA), and is to be renewed every 5 years. If it is not renewed, the Department may lose 1.2 million dollars of federal funding.

Mr. Hutchinson asked if any element of the NPS Management Program started out as recommendations from EPA, and what statute gives EPA the authority to require this document. Mr. Monahan stated that the nine key elements are actually guidance from EPA and their authority comes from §319 of the CWA.

Mr. Gutierrez moved to accept the document and start the 30-day comment period. Mr. Johnson seconded the motion. The motion passed unanimously.

Item 10: WQMP Amendments, and Fish Toxicants.

Peter Wilkinson, Assistant Chief of Fisheries with the Department of Game and Fish (NMDGF), gave a brief overview of the Department's use of fish toxicants.

Fish toxicants are currently used in two programs - one is the Gila Trout Recovery Program and the Rio Grande Cutthroat Trout Management Program. Both programs have been active for many years, have demonstrated success, and serve to reach a common goal shared by numerous agencies for the restoration of New Mexico's native fish.

The use of piscicide is fundamental to the restoration of native fisheries and falls within the guidance of the Clean Water Act, as noted in §101(a): "The objective of this Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." The NMDGF noted that their use is not in compliance with the State Water Quality Standards (WQS) and asked for a variance from the Standards.

Mr. Ritzma asked what enforcement action could be taken if the NMDGF used fish toxicants and the WQCC found it to be a violation of the WQS. Mr. Eric Ames, counsel for the NMED, stated that it is the Department's position that the Commission does have the discretion to decide whether or not to enforce the Standards.

Mr. Ritma asked Mr. Ames if the WQCC has the power to grant a variance from the WQS. Mr. Ames replied that the Department's position for a long-term solution is to amend the Standards, and for a short-term solution, amend the WQMP. This would allow the NMDGF to continue its use of piscicides until the WQCC can formally consider an amendment to the Standards. The Department is prepared to bring that proposal to the WQCC after the close of the current triennial review.

Mr. Rel asked why the NMDGF feels it needs a variance now, when it has used piscicides in the past without one. Mr. Wilkinson stated that it is important to have all of the Department's practices in compliance with the law.

Mr. Steve Pierce, SWQB stated that the use of fish toxicants has been informally reviewed, and was thought to be sanctioned by the WQCC, since it was conducted by a constituent agency. It is clear that this practice is in violation of the WQS and the Standards should be amended to include a provision for short-term toxic releases.

Mr. Johnson asked if individuals are licensed and trained in the use of toxic substances. Mr. Wilkinson stated that the Department has taken the initiative to ensure that anyone applying the products is licensed, and a NEPA review is conducted before the application.

Mr. Ritzma asked if the use of the products pose a risk to human health. Mr. Wilkinson stated that before the EPA and the Department of Agriculture register the products, the issue of health and human safety is reviewed.

Mr. Ames stated that a public hearing on any request made by the NMDGF or the Fish and Wildlife Service to use a piscicides in any specific instance would be held prior to approval by the Commission.

Mr. Hutchinson asked if there had been threatened litigation as a result of the use of toxic substances in the Gila Trout Restoration Project. Mr. Wilkinson stated that there had not been any threatened litigation as a result of that project.

Mr. Hutchinson stated that the use of piscicides and toxic substances is not the only tool available for Gila Trout recovery, and may be the worst tool to use.

Mr. Wilkinson stated that most States have a variance in their Standards for the use of fish toxins.

Mr. Gutierrez stated that the Commission does not have the authority to grant a variance for the use of fish toxins without the appropriate language being added to the Standards.

Mr. Ames stated that the proposed amendment to §1102.F of the Standards would be of statewide applicability, but the amendment itself would require regional hearings on individual applications for the use of piscicides.

Mr. Ritzma directed NMED to propose an amendment to the Standards after consultation with the NMDGF. A public hearing on the proposed amendment should be held as soon as possible in order to give the Commission the authority to approve the use of such toxicants.

Item 11: Start 30-day public comment period on Redondo Creek, Jemez Watershed and Middle Rio de las Vacas TMDL's.

Mr. David Hogge, TMDL coordinator for the Surface Water Quality Bureau, requested the start of the 30-day comment period for the Middle Rio de las Vacas (temperature), Redondo Creek (total phosphorus), Jemez River (turbidity and stream bottom deposits), and the Rio Guadalupe (turbidity and stream bottom deposits) TMDLs, which will end on September 9, 1999, at 5:00 p.m. mountain daylight time.

Final Middle Rio de las Vacas, Redondo Creek, Jemez River and Rio Guadalupe TMDLs will be submitted to the Commission for their formal approval at the scheduled public meeting tentatively set for October 12, 1999, at which time public comments will also be accepted. Interested persons may contact the Bureau for more information. All draft TMDLs are posted on the NMED website.

Mr. Gutierrez asked if the Bureau would resample for **exceedences** still occurring after the start of the process. Mr. Hogge stated that data used to determine whether TMDLs will be developed was historical, and collected from last year's sampling. The Bureau used a thermograph at different intervals in the Rio de las Vacas to measure the temperature every hour. The model for the thermograph was developed by the USGS.

Mr. Rel moved to accept the document and open the 30-day comment period. Mr. Olson seconded the motion. The motion passed unanimously.

Item 12: Discussion, approval and adoption of the Rio Chamita and Canadian River (Cimarron) Basin TMDLs into Work Element 6 of the New Mexico Water Quality Management Plan.

Mr. Hogge listed the Federal public participation requirements, as set forth in 40 CFR § 25 and 40 CFR §130.7(d). All public participation requirements have been met.

Adoption and incorporation of the TMDLs into the State WQMP is required under §208 of the federal Clean Water Act and 40 CFR 130.6. The United States Environmental Protection Agency may not issue an NPDES permit that is in conflict with the State-adopted WQMP. All TMDLs must be incorporated into the WQMP to have official standing. All public comments received on the TMDLs were non-substantive and the first meetings were well attended.

Mr. Hogge stated that some additional changes were made on the Cimarron TMDL. In Table 1, North Ponil Creek, the flow value was changed from 13.1 cfs to 6.49 cfs, based on a modeled flow using a geomorphological cross-section and WINEXPRO model. In Table 2, the geometric mean for TSS on Cieneguilla Creek changed from 41 mg/L in the draft document to 32 mg/L in the revised document due to new spring sampling data received this year. The sampling data were incorporated into the calculation. In Table 3, background loads were not possible to calculate in the Cimarron watershed. A reference reach, having similar-stream channel morphology and flow, was not found. The original draft TMDL had a background allocation of 550.8 lbs./day, which has been removed. The new numbers are a result of the re-calculation with the background allocations.

In Table 4, changes were made to clarify actual load reductions. Different equations were used to calculate actual load reductions on Moreno, Six-Mile, Cieneguilla and North Ponil creeks. No changes were made to the Rio Chamita TMDL.
Mr. P. Gutierrez asked why the flow value in Table 1 was changed from 13.1 cfs to 6.49 cfs, and what calculations were used to reach the lower number. Mr. Hogge stated that it was achieved by conducting a geomorphological study and inputting the flow into the WINEXPRO model. This gives a more accurate flow number on daily basis, instead of a monthly mean flow.

Mr. Kelly asked why a TMDL was not developed for the temperature levels in the Rio Chamita. Mr. Hogge stated that it was easier to establish a temperature TMDL format using the Rio de las Vacas site and getting it technically approved by USEPA Region 6 first, rather than addressing the Rio Chamita at this time. Mr. Hogge stated that a draft temperature TMDL for Rio Chamita would be ready by the September 14th WQCC meeting.

Julie Tsatsarios, SWQB stated that the WINEXPRO model is a cross-channel analyzer and was developed by West Consultants for the Forest Service. Numerous consultants use the model.

Mr. Hutchinson asked what does a TMDL mean if it has 1675 lbs./day. Mr. Hogge stated that the total sediment load to that stream must be reduced by 1675 lbs./day to meet standards. This is based on 6.49 cfs.

Mr. P. Gutierrez moved to accept the Rio Chamita and Canadian River (Cimarron) Basin TMDL into work element 16 of the WQMP. Mr. A. Gutierrez seconded the motion. The motion passed unanimously.

Item 13: Report on Litigation and Adjudicatory Matters.

There were no Litigation or Adjudicatory matters to discuss.

Item 14: Other Business

Tamella Gonzales, WQCC secretary, presented a draft budget to the Commission that will be brought before Legislature for approval at the next session. The draft budget is available for public review in the WQCC secretary's office.

Item 15: Next Meeting

The next meeting of the WQCC will be held on September 14, 1999 at 9:00 a.m.

Peter Maggiore

Chairperson