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 October 12, 1999

The New Mexico Water Quality Control Commission (WQCC) meeting was held on October 12, 1999, at 9:00 a.m. in the State Capitol Building, Room 317, Old Santa Fe Trail and Paseo de Peralta, Santa Fe, New Mexico.

Members present:

Peter Maggiore	WQCC Chair, Environment Department (NMED)
Tom Turney	State Engineer & Interstate Stream Commission
Ricardo Rel	Department of Agriculture
Howard Hutchinson	Soil and Water Conservation Commission
Jack Kelly	Department of Game and Fish
Bill Olson	Oil Conservation Division
Lynn Brandvold	Bureau of Mines and Mineral Resources
Paul Gutierrez	Member-at-Large

Members absent:

Dave Johnson	State Parks Division
Irene Lee	Member-at-Large
Alberto Gutierrez	Member-at-Large

Others present:

Daniel Rubin	WQCC Counsel
Tamella Lakes	WQCC Administrator
David Hogge	NMED
James Davis	NMED
Marcy Leavitt	NMED
Greg Lewis	NMED
Steven Pierce	NMED
Hoyt Pattison	Neptune and Co.
Dale Doremus	NMED

Jonathan Cote	NMED
Glenn Saums	NMED
Julie Maitland	New Mexico Department of Agriculture
Maryann McGraw	NMED
Peter Monahan	NMED
Kristen Dors	NMED
Bruce Thomson	University of New Mexico
Gary Schiffmiller	NMED
Fred Hansen	New Mexico Oil and Gas Association
Charles Roybal	BHP Coal
Julie Tsatsaros	NMED

Chair Peter Maggiore called the meeting to order at 9:12 a.m.

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

Item 2: Approval of the agenda.
Mr. Paul Gutierrez moved to approve the agenda with one change. Item seven was moved up to item five. Mr. Bill Olson seconded the motion. The motion passed unanimously.

Item 3: Review of the September 14, 1999, minutes.
Mr. Howard Hutchinson moved to approve the September 14, 1999, minutes as amended. Mr. Jack Kelly seconded the motion. The motion passed unanimously.

Item 4: Briefing by the Ground Water Quality Bureau on possible request to increase Ground Water discharge permit fees.
Marcy Leavitt, Chief, Ground Water Quality Bureau (GWQB), stated that the Bureau is considering an increase in ground water permit fees which are authorized by 20 NMAC 6.2, §3114. The fee regulations were adopted in 1991 and have not been increased since that time. Ms. Leavitt stated that the Bureau has been tracking the fee revenues, and it shows that they cover only a small percentage of permitting costs. Over the last three years the fee revenues have covered approximately 13% of personnel costs associated with issuing ground water discharge permits. The general fund and a small Federal Grant cover other costs. Ms. Leavitt provided the WQCC with a packet outlining the New Mexico Environment Department's (NMED's) ground water discharge fees collected vs. the actual personnel costs.

Mr. Turney asked what the statute requires the Bureau to charge for permitting fees.

Ms. Leavitt said that section 74-6-5.J of the Water Quality Act states, "The Commission shall provide by regulation a schedule of fees for permits, not exceeding the estimated cost of investigation and issuance, modification and renewal of permits."

Mr. Olson stated that the Oil Conservation Division (OCD) has a similar problem with their permitting fees, and the Division is looking into this.

Mr. Hutchinson stated that he would like to have a discussion regarding possible changes that can be made within the GWQB to streamline the permitting process and cut back on costs.

Item 5: Update on and discussion of the Western Governors Association Meeting concerning the EPA draft TMDL regulations.

Dr. Jim Davis, Chief Surface Water Quality Bureau (SWQB), spoke briefly about the Western Governors Association meeting that was held in Park City, Utah on the 22nd and 23rd of September. Dr. Davis stated that all Western States were represented at the meeting. The first discussion held was on the draft TMDL regulation addressing the National Pollutant Discharge Elimination System (NPDES) regulation, and the water quality standards regulation. The discussion centered on the idea of coordinating the three regulations so that they blend together better than they have in the past.

Dr. Davis stated that all of the Western States were very concerned about a proposal in the draft regulations that deals with pollution rather than pollutants. The discussion centered on the idea of alteration of flow being considered a pollution effect, and what a Western State would do during an extended drought. It is possible that a river or stream in response to a natural event, could be considered to be suffering from pollution. One of the things that came out of the discussion was the extension of the comment period on the draft regulation for 60 days. It was due to end on October 22nd, it has been extended to December 22, 1999.

Another discussion was on the two aspects of TMDL calculations, one being the numeric concentration of a pollutant, the other being the volume of the receiving water, and how much it can absorb and still meet water quality standards. Talk centered around changing the volume of water to meet water quality standards. Dr. Davis stated that there are management practices, other than increasing water volume, that would effectively decrease pollutants.

Dr. Davis said the timeframe for adoption of these regulations was around July or August of the year 2000.

The second day of the meeting was a how-to session. The focus was on how to set up a TMDL, what goes into it, and holding public meetings.

Mr. Hutchinson asked if there was any mention of EPA Regional Directors superseding State jurisdiction in NPDES permitting process. Dr. Davis stated that there was some limited discussion. The proposed language in the NPDES permit portion of the draft regulation would not affect New Mexico.

Mr. Hutchinson asked, if the regulations were to be adopted as written, would it affect the current TMDL approval process being followed by the SWQB. Dr. Davis stated that it would not affect the current process, and the same level of review would continue.

Mr. Rel asked if, under the current regulation, EPA would have final approval of management practices that would be used to reduce a certain pollutant. Dr. Davis said no, management practices are applied to nonpoint source issues, and he does not see any oversight happening at any level within the EPA.

Mr. Kelly asked if there was a discussion on temperature exceedances that originate in other States and cross borders, and is there coordination between the States with regards to TMDL standards and priorities. Dr. Davis stated that boundaries and jurisdiction issues were discussed. The States do recognize these issues and understand that there is a need for coordination. It is an issue that needs further discussion. New Mexico is also concerned about this issue with regards to Indian country.

Mr. Rubin asked what types of enforcement mechanisms are in place to protect downstream waters. Dr. Davis stated that by regulation, upstream States must protect downstream State standards. The mechanism for ensuring this is at the federal level.

Mr. Gutierrez asked what the Department would do in a case where an upstream state standard is less stringent than the standards in a downstream state. An example would be Colorado, once the water crosses into New Mexico it will violate our standards, and always will. Would the Department have recourse against the upstream state. Dr. Davis stated that there is a mechanism, never used by the Department, available through EPA to open consultation between the parties in a case of unreasonable consequences.

Chair Maggiore asked if the proposed rule promulgation, if successful, would necessitate regulation changes by the WQCC. Dr. Davis stated that he was aware of none.

Item 6: Final approval and adoption of the Nonpoint Source (NPS) Mangement Program Document.

Dr. Davis stated that states are required by the federal Clean Water Act (CWA) to have an NPS Management Program. The New Mexico NPS Mangement Program was initially adopted by the WQCC on September 12, 1989, updated on July 12, 1994, and will be brought to the Commission every 5 years for updating. The program contains a description of how the SWQB does NPS jobs, outlines what will be accomplished for the next 5 years, emphasizes the need for a cooperative program, and recognizes the need for a watershed approach. Federal public participation requirements for approval can be found throughout the code of federal regulations. On April 27, 1999, the NPS Task Force and the UWA Work Group met to begin review of the first draft. On August 10, a 30-day public comment period began. Notices stating the availability of the document for public review were placed in newspapers statewide. The document was placed on the Department's Web site and in libraries statewide.

A total of 8 comments were received during the public comment period. The document was not substantively changed as a result of those comments.

Mr. P. Gutierrez stated that there is litigation against the Executive Order for the Clean Water Action Plan (CWAP), regarding a violation of NEPA and the Administrative Procedures Act. Mr. P Gutierrez asked that if the litigants do win, would it subtract credibility from the NPS Management Program, and could references to the CWAP be excluded from the document. Dr. Davis stated that he did not know what the outcome of the lawsuit would be and striking all references from the document at this point in time would be a major task for the Bureau. The Bureau would still use the CWAP and the Unified Watershed Assessment (UWA) processes regardless of the outcome of the lawsuit. There is a need to use it to get the program organized, and the mechanism the Bureau is using is the CWAP and the UWA processes because they are available, and endorsed by federal agencies. If, as a result of a change in administration or as a result of the pending lawsuit, these two programs are terminated, then reference to the programs could be eliminated from the document.

Mr. Rel asked what would happen to the document if the lawsuit were successful. Dr. Davis stated that nothing would happen to it, the document is a description of how the Bureau proposes to pursue management of nonpoint source pollution in New Mexico.

Chairman Maggiore asked Dr. Davis if the proposal is based upon existing statutory authority that the State of New Mexico has independenly of the executive order. Dr. Davis stated that that is correct.

Mr. P. Gutierrez asked who, in the NPS Task Force and the UWA Work Groups, makes the decision to report the results of Surface Water Quality Bureau (SWQB) NPS monitoring projects and agency management activities to the WQCC. Dr. Davis stated that significant changes would be reported to the WQCC.

Dr. Davis stated that any group is welcome to participate in the NPS Task Force, and they have an extensive mailing list.

Ms. Brandvold asked Dr. Davis if removing the references to the CWAP or the UWA would jeopardize federal funding. Dr. Davis stated that "Enhanced Benefit Status" would not be affected either way.

Mr. Hutchinson stated that he has reservations about approving the document with references to the CWAP because EPA has not issued a guidance document on the CWAP yet. EPA should issue this guidance document sometime in November 1999. Mr. Hutchinson also stated that it has taken 5 years to gain the trust and partnership of the people working on the Gila Monster, which is mentioned in the document. The CWAP, the elements that it proposes and the language that it contains have all but wiped out 5 years of work.

Deputy Secretary Paul Ritzma took over as acting chairman after the lunch break.

Mr. Hoyt Pattison stated that a note should be made in the document of the exemption given to irrigated agriculture. This exemption also appears in the federal Clean Water Act.

Changes to the New Mexico Nonpoint Source Management Program as initially proposed by the NMED, were agreed upon by the WQCC as follows:

Executive Summary
Mr. P. Gutierrez moved to add a disclaimer with a footnote to be placed at each reference to the CWAP and the UWA. Mr. Hutchinson seconded the motion. The motion passed unanimously.
Disclaimer: This document includes reference to current programs such as the federal Clean Water Action Plan and Unified Watershed Assessment. Inclusion of these references does not constitute endorsement of the legality of such programs by the Water Quality Control Commission (WQCC), or any constituent of the Commission. The WQCC does not endorse, nor hold an opinion, as to the legality of the Clean Water Action Plan or Unified Watershed Assessment, but has simply used when appropriate, these documents as a reference. Should the legality of a currently existing program be successfully challenged in the future, this document due to its nature as a dynamic "living" instrument can be modified accordingly after public review and participation. In all aspects of the development of this program, the concerns of the citizens and the resources of the State of New Mexico have been of paramount concern regardless of current federal directions or initiatives.
Section I
No changes
Section II
No changes
Section III
Ms. Brandvold moved to add the sentence, "This document does not purport to supersede any statutory exemption of the federal Clean Water Act or the New Mexico Water Quality Act" to number 3 - Legal Authority. Mr. P. Gutierrez seconded the motion. The motion passed unanimously.
Section IV
Item 1.A.1 – Mr. P. Gutierrez stated that this should be a short-term goal.
Section V
Mr. Hutchinson stated that the categorization of watersheds overlaps with the anti-degradation policy and that specific authority has been delegated to the WQCC. The proposal in Section 5 is to have the NPS Task Force and the UWA Work Group categorize the watersheds. The feeling among a number of districts and the Soil and Water Conservation Commission is that this is creating a conflict with the WQCC itself. The categories are limiting the scope of the WQCC's authority and therefore delegating that authority to the NPS Task Force and the UWA Work Group.

Dr. Davis stated that categorization is a plan to implement nonpoint source management projects and does not see where the categorization has anything to do with the antidegradation policy.

Mr. Hutchinson stated that the antidegradation policy specifically refers to waters that are pristine and are within classified areas such as wilderness, scenic rivers, state parks and national monuments. By creating the classification through the NPS Task Force, they have the authority to put a watershed into one of the 4 categories. All of the stream segments that would then be in that watershed under that category would then fit into the categorization that is under the antidegradation policy. Dr. Davis stated that he disagrees, that is not what categorization of a watershed would do. It is the prerogative and the authority of the WQCC to designate individual waters as pristine or as natural resource waters. The way that this decision was arrived at was to judge the availability of information about the individual waters within a given watershed, and whether or not there was sufficient information to make an informed judgment about the general condition of a watershed.

Mr. Hutchinson stated that he does not like the idea of delegating the authority of classifying watersheds through the NPS Management Program to the NPS Task Force. It should be the WQCC that makes those classifications.

Mr. Hutchinson and Mr. P. Gutierrez believe that there are no water bodies in the state of New Mexico that would fit into category III – pristine watersheds, which is defined as pure and unsoiled.

Mr. P. Gutierrez moved to strike the word pristine from category III. Ms. Brandvold seconded the motion.

Acting Chairman Ritzma stated that removing the word pristine from category III would do the State a disservice. It should be the goal of a watershed in category II to achieve a pristine state, as described in category III, through sound management practices.

Mr. P. Gutierrez disagreed with Acting Chairman Ritzma's statement. Achieving a category III is unrealistic, that would mean that no human interaction would take place in those areas.

The motion passed. Acting Chairman Ritzma voted no.

Mr. Hutchinson moved to have the categorization of watersheds in New Mexico be adopted by the WQCC under the NPS Management Program. The motion died for lack of a second.

Mr. Hutchinson stated that the categorization is used by the NPS Task Force to weigh its decision on providing funding under the 319 funds.

If a watershed is not under category I, they will automatically be denied funds. That person or group who is rejected as a result of the classification, has no public input into the classification decisions or public bodies to appeal those decision to.

Section VI

No changes

Section VII

No changes

Section VIII

No changes

Section IX

Mr. P. Gutierrez moved to add the word "wildlife" to page 36, second paragraph, line 4, after livestock overgrazing. Mr. Rel seconded the motion.

Acting Chairman Ritzma disagreed with adding the word "wildlife". Most of the decline can be attributed to man's activities and not wildlife activities.

The motion did not pass.

Mr. P. Gutierrez moved to insert "forest management" to page 36, second paragraph, to the sentence about causes of decline to riparian areas. Mr. Hutchinson seconded the motion. Mr. P. Gutierrez withdrew his motion.

Mr. Hutchinson moved to insert "fire management" to page 36, second paragraph, to the sentence about causes of decline to riparian areas. Mr. P. Gutierrez seconded the motion. The motion passed unanimously.

Section X

Mr. Bruce Thompson would like to supplement the State programs listed in section X with the Office of the State Engineer. Mr. Hutchinson moved to add the Office of the State Engineer portion of the plan to section X, page 48, number 3, under "Other State Programs". Ms. Brandvold seconded the motion. The motion did not pass.

The Commission asked the Office of the State Engineer to present their proposal at a future meeting for adoption and incorporation into the NPS Management Plan.

Mr. P. Gutierrez moved to strike the word "agricultural" from page 52, the first sentence under Item D – New Mexico Department of Agriculture, NPS categories to be addressed: Agriculture. Mr. Rel seconded the motion. The motion passed unanimously.

Section XI

No changes

Section XII

No changes

Section XIII

No changes

Section XIV
No changes
Section XV
Mr. Rel moved to drop the word "pristine" in the UWA categories throughout the document. Acting Chairman Ritzma seconded the motion. The motion passed unanimously.
Section XVI
No changes

Mr. P. Gutierrez moved to approve the NPS Management Program document as amended. Mr. Olson seconded the motion. The motion passed unanimously.

The Surface Water Quality Bureau will provide a copy of the final document to the Commission. The NPS Management Program document will be posted on the NMED website.

Item 7: Final approval, adoption, and incorporation into the NM Water Quality Mangement Plan of the Total Maximum Daily Loads (TMDLs) for the Middle Rio de las Vacas, Redondo Creek, Jemez River and the Rio Guadalupe.
Mr. David Hogge, State TMDL Coordinator stated that the public comment period started on August 10th and ended September 10th. The TMDLs were made available to the public at the WQCC meeting on August 10th. Notice(s) were mailed to the WQCC mailing list and to the Acequia Association. Announcement of the comment period was e-mailed to the towns of Jemez Springs and Cuba, Jemez Pueblo, BLM Cuba office and the USFS Jemez Springs and Cuba Ranger districts. A public meeting was held in the watershed on August 16th in Jemez Springs at the municipal offices. A press release was run in the Cuba News, Jemez Thunder, Los Alamos Monitor and the Albuquerque Journal on August 10th. The TMDLs were posted on the NMED website. All comments received were inserted into the appendices of the specific documents in their entirety along with the Bureau's responses.

Mr. Kelly stated that the word "measures" in the table of contents is misspelled and asked where the funding for BMPs comes from. Dr. Davis stated that the process is through the 319 program.

Mr. P. Gutierrez asked Ms. Tsatsoros if background levels would continue to be monitored. It seems that standards will not be achieved because of background levels. Ms. Tsatsaros stated that the background levels for total phosphorus in Redondo Creek were a problem. There is a lot of high organic content naturally occurring in the soils. There is a lot of grazing and wildlife in the watershed that may be contributing to the phosphorus levels and exceeding state standards. What the Bureau would like to do in the implementation plan is to further look at the entire watershed and see how much wildlife activity is impacting the background levels.

Ms. Brandvold moved to approve the adoption and incorporation into the NM Water Quality Mangement Plan of the Total Maximum Daily Loads (TMDLs) for the Middle Rio de las Vacas, Redondo Creek, Jemez River and the Rio Guadalupe. Mr. P. Gutierrez seconded the motion. The motion passed unanimously.

Item 8: Other Business
Dr. Davis gave the Commission a draft letter concerning the delinquency of EPA in approving the Santa Fe River TMDL. The understanding is that the TMDL will be submitted sometime during the week of October18th. At the earliest the TMDL could be submitted to the Commission at the November meeting and opened up for public review at that time. The TMDL is anticipated to be a complex document, and the Bureau expects a lot of public interest.

Dr. Davis stated that the purpose of the letter would be for the Commission to go on record as not failing in their duty to complete the Santa Fe River TMDL.

Ms. Brandvold moved to have the Chair or Acting Chair sign the letter. Mr. P. Gutierrez seconded the motion.

Mr. Rel moved to amend the motion to have the letter carbon copied to the congressional delegates with background information on the situation. Mr. P. Gutierrez seconded the amendment.

Acting Chairman Ritzma moved to amend the motion to replace the last sentence with, "Due to the delay in the receipt of this document, the pubic review process and final adoption cannot be accomplished by December 31, 1999." This letter is to also be sent to the Region 6 Administrator, Greg Cook.

The motion passed unanimously.

The triennial review discussion will be held in room 305 of the State Capitol Building on December 7th, 8th, and 9th.

Item 9: Next Meeting.
The next meeting of the WQCC will be held on November 9, 1999, at the State Capitol Building in room 317.

Mr. Rel moved to adjourn.

Peter Maggi 11/19/99

Chairperson