



**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION
1190 St. Francis Drive
P.O. Box 26110
Santa Fe, New Mexico 87502
(505) 827-2425**

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
April 11, 2000**

The New Mexico Water Quality Control Commission (WQCC) meeting was held on April 11, 2000, at 9:00 a.m. in the State Capitol Building, Room 317, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico.

Members Present:

Paul Ritzma	Acting Chair, New Mexico Environment Department
Tom Turney	State Engineer & Interstate Stream Commission
Jack Kelly	Department of Game and Fish
Bill Olson	Oil Conservation Division
Ricardo Rel	Department of Agriculture
Dave Johnson	State Parks Division
Howard Hutchinson	Soil and Water Conservation Commission
Lynn Brandvold	Bureau of Mines and Mineral Resources
Paul Gutierrez	Member-at-Large
Irene Lee	Member-at-Large

Members Absent:

Alberto Gutierrez	Member-at-Large
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Others Present:

Daniel Rubin	WQCC Counsel
Tamella Lakes	WQCC Administrator
David Hogge	NMED/SWQB
James Davis	Chief/SWQB
Steven Pierce	NMED/SWQB
Bruce Thomson	University of New Mexico
Corliss Thalley	Office of the Attorney General
Jennifer Ruby	NMED/OGC
Haywood martin	Chief/CGB
Charles de Saillan	NMED/OGC
Marcy Leavitt	Chief/GWQB

Liz Taylor	San Juan Water Commission
Susan Kery	MRGCD
Maxine Goad	Sierra Club
Mike Saladen	LANL
Charlie Nylander	LANL
Richard Virtue	Virtue, Najjar, et. al.
Rick Pickering	LFC
Kelly Bitner	Neptune and Company
Greg Lewis	Director W&WMD
Caren Cowan	New Mexico Cattle Growers Assoc.
Bill Brancard	State Land Office

Chairman Ritzma called the meeting to order at 9:00 a.m.

Item 1: Roll Call.

Tamella L. Lakes, WQCC Administrator took roll call.

Item 2: Approval of the agenda.

Item number 6 was moved to item number 4 to accommodate both the counsel for the petitioners and counsel for the NMED. Mr. Olson moved to approve the agenda as amended. Mr. Johnson seconded the motion. The motion passed unanimously.

Item 3: Approval of the March 14, 2000 minutes.

Ms. Brandvold moved to approve the March 14, 2000, minutes as amended. Mr. Hutchinson seconded the motion. The motion passed unanimously.

Item 4: Carlsbad Irrigation District, the Elephant Butte Irrigation District, LANL, Middle Rio Grande Conservancy District, New Mexico Cattle Growers Association, New Mexico Dairy Producers Association, new Mexico Municipal League, and the San Juan Water Commission's Petition to adopt Rules Governing Water Quality Control Commission Regulation Hearings, (WQCC 00-03).

Mr. Ritzma recused himself from this proceeding because of discussions with Los Alamos National Laboratory and the Department of Energy, which occurred after the petition was submitted to the Commission. Mr. Ritzma stated that after discussions with Department personnel, he has learned that other members of the Commission may have been contacted about the petition. He advised the Commissioners that this contact should result in a recusal.

Mr. Richard Virtue, Counsel for LANL, stated that he contacted the Secretary on behalf of all the petitioners to set up a meeting regarding the petition. This contact was made before the petition was submitted to the Commission.

Mr. Rubin advised the Commissioners to divulge any contact with the petitioners to him so they could discuss the nature of that contact and whether anyone may be bothered by it.

Mr. Hutchinson stated that a copy of the draft petition was mailed to him, and he read it, prior to the filing date. He sent questions back to the petitioners, but did not receive a response.

Mr. P. Gutierrez stated that a copy of the draft petition was also mailed to him, but he did not read it, and has had no contact with the petitioners.

Ms. Liz Taylor, Counsel for the San Juan Water Commission and spokesperson for the petitioners, stated that they would like the Commission to set a schedule for a working group that would consist of NMED, the

petitioners, and any interested parties. The working group would identify and develop any areas of consensus with the proposed rules and would submit them to the Commission at a later date for a public hearing. Ms. Taylor stated that the petitioners are frustrated with the lack of procedures that govern rulemaking hearings. At the end of the Triennial Review, an ad hoc group was established to create a set of procedures that would make this process better. The group looked at procedural rules of other agencies and other states for similar hearings to develop the proposal submitted to the Commission. The petitioners propose to publish the hearing notice on or before May 1, 2000. The notice would contain information on the working group, and a hearing would be scheduled for September 12, 2000.

Mr. Charles de Saillan, Counsel for NMED, stated that the Department is disappointed with the way that this matter has been handled. The Department was not consulted at all in the development of the proposed rules before they were submitted to the Commission. The Department is concerned with some of the details in the proposed rules, but has not really had enough time to review the document in any detail. Two areas of concern involve exparte communication and cost benefit analysis. The Department is willing to work with the petitioners and other interested parties to revise the existing procedures. The schedule put forth by the petitioners is unrealistic; three (3) months will not be enough time. The Department believes that a six (6) month time frame is more appropriate and realistic to accommodate the schedule of all the parties and to conduct the work group effort.

Ms. Maxine Goad stated that the Sierra Club was in favor of streamlining the process, but believes that the proposed schedule is extraordinarily short.

Mr. Rubin stated that the Commission has ninety (90-days) to decide whether to hold a hearing, and that decision must be made in an open meeting.

Ms. Taylor stated that the petitioners agree to waive the 90-day time limit for the Commission to act on their petition. The petitioners agree to allow the Commission to act on their petition at the July 11, 2000 meeting.

Mr. P. Gutierrez moved to table the petition until July 11, 2000. Mr. Rubin will draft a letter that will be mailed out to all persons on the WQCC mailing list informing them of the working group and asking that they contact the Commission Administrator if they wish to participate. The work group, facilitated by Mr. Rubin, will report back to the Commission at their July 11, 2000 meeting, and the Commission will act on the petition at that time. Mr. Johnson seconded the motion. The motion passed unanimously.

Mr. Olson, Mr. Hutchinson and Ms. Lee voiced concerns about the petition and asked Mr. Rubin if it would be appropriate to discuss them at this time. Mr. Rubin stated that as long as the discussions were on the record, there would not be any concerns raised about exparte communication.

Ms. Lee moved to have the Commission submit their written comments on the petition to the working group at the May 9, 2000, meeting. Ms. Brandvold seconded the motion. The motion passed unanimously.

Item 5: Deliberation and possible action on NMED's Review of the Department of Game and Fish petition to apply Antimycin A in White Creek, Costilla Creek, South Ponil Creek and Poso Creek.
Mr. Johnson recused himself from this agenda item.

Ms. Corliss Thalley, Counsel for the Department of Game & Fish (DG&F), requests that the Commission proceed with the previously noticed hearings in Silver City and Taos. The DG&F will submit supplemental information that will address all Environment Department (NMED) concerns no later than April 18, 2000.

Mr. Olson asked the DG&F if the White Creek petition satisfies all of the WQCC notice requirements. Mr. Rubin stated that the notice did not contain everything that he wanted to see, but is sufficient to proceed with the hearing.

Mr. Peter Wilkinson, DG&F, stated that after reviewing the NMED comments, the Department has decided to amend its petition and submit it to the Hearing Officer and the Commission. The amended petition will incorporate all of the NMED comments and will be submitted at the hearings.

Mr. Ritzma asked Mr. Wilkinson if there was anything in the NMED comments that would preclude the Commission from holding either hearing. Mr. Wilkinson said no.

Item 6: New Mexico Environment Department (NMED) petition to amend 20/7.5 NMAC – Wastewater Facility Construction Loan General Provisions, (WQCC 00-02).

Ms. Jennifer Ruby, Counsel for NMED, requested that a hearing be held on the proposed rules. The rules were initially promulgated in 1985, and updated in 1987. The major changes to the rules are lowering the interest rates and streamlining the process of administering the Wastewater Construction Loan Fund. With these rule changes the Construction Programs Bureau (CPB) proposes to clarify administrative processes and amend eligibility requirements to include non-point source water pollution control projects and to streamline the application procedure for priority list placement by eliminating the detailed financial information required in the preliminary application. The changes will alter or eliminate terminology based on its relevance or applicability to the program. The changes will allow the CPB to more effectively market its loan products and will make the application process less cumbersome for borrowers.

Mr. Rel moved to set a hearing for June 13, 2000, on 20.7.5 NMAC – 20.7.7 NMAC – Wastewater Facility Construction Loans General Provisions. Mr. P. Gutierrez seconded the motion. The motion passed unanimously. The Chairman of the Commission will sit as the Hearing Officer.

Item 7: Other Business.

Ms. Karen Cowen, New Mexico Cattle Growers Association (NMCGA), sent a letter to the Commission requesting a 60-day extension of the comment period for the draft 2000-2002 303.d list for assessed stream and river reaches.

Mr. David Hogge, State TMDL Coordinator stated that he does not have a problem with extending the comment period, but feels that 60-day is excessive. An extension of 30-days would be sufficient.

Ms. Brandvold moved to extend the comment period on the draft 303.d list for 60-days until June 12, 2000. Ms. Lee seconded the motion. The motion passed unanimously.

Item 8: Next Meeting.

The next meeting of the WQCC will be held on May 9, 2000, in Taos, New Mexico.

Mr. Johnson moved to adjourn at approximately 11:30 a.m. Mr. Kelly seconded the motion. The motion passed unanimously.



Chairperson