



**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION
1190 St. Francis Drive
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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
July 11, 2000**

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

Members Present:

Peter Maggiore	Chairman, New Mexico Environment Department
Jack Kelly	Department of Game and Fish
Bill Olson	Oil Conservation Division
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
Steve Glass	Member-at-Large

Members Absent:

Bill Olson	Oil Conservation Division
Tom Turney	State Engineer & Interstate Stream Commission
Ricardo Rel	Department of Agriculture

Others Present:

Daniel Rubin	WQCC Counsel
Tamella Lakes	WQCC Administrator
Steven Pierce	NMED/SWQB

Jolene L. McCaleb	San Juan Water Commission
Erik Galloway	NMED/WWMD
Marcy Leavitt	NMED/GWQB
Greg Lewis	NMED/WWMD
Richard Virtue	Virtue Najjar Law Firm
Regina Romero	NM Municipal League
Bruce Thomson	UNM
Wayne Price	Oil Conservation Division
Albert Mendez	49 CES HAFB, NM
Robert George	New Mexico State University
Patrick Hanson	NMED/SWQB
Joe Martinez	NM Rural Water Association
Maxine Goad	Sierra Club
Donald Neeper	NM Citizens for Clean Air and Water
Geoff Fettus	NM Environmental Law Center
Charles de Saillan	NMED/OGC
Aaron Bielenberg	NM Environmental Law Center
Mike Bowen	NM Mining Association
Reymundo Gutierrez	City of Albuquerque
Bill Brancard	State Land Office
Deborah Woitte	LANL
K.M. Sisneros	Self
Peter Luthiger	QUWIRA Mining
Susan Kery	Sheehan, Sheehan and Stelzner P.A.
Maura Hanning	NMED/GWQB
Clay Clarke	NMED/OGC
Kathy Pilnock	Lamy DWU Association
Lori Levacy	El Vadito DWU
Andrea Rivera	NMED/SWQB
Karen Browne	NMED/SWQB

Chairman Maggiore called the meeting to order at approximately 9:11 a.m.

Item 1: Roll Call.

Tamella L. Lakes, WQCC Administrator took roll call.

Item 2: Approval of the agenda.

Mr. Glass moved to approve the agenda. Ms. Brandvold seconded the motion. The motion passed unanimously.

Item 3: Approval of the June 13, 2000, minutes.

Ms. Brandvold moved to approve the June 13, 2000, minutes as amended. Mr. Johnson seconded the motion. The motion passed unanimously.

Item 4: Approval of the revisions to the May 9, 2000, minutes.

Ms. Brandvold moved to table the minutes until the August meeting when Mr. Olson would be present to vote on the changes he requested be made to the May minutes. Mr. Johnson seconded the motion. The motion passed unanimously.

Item 5: The Carlsbad Irrigation District, Elephant Butte Irrigation District, Los Alamos National Laboratory, 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 repeal the WQCC Guidelines and adopt the Rules for Water Quality Control Commission Regulation Hearings

Ms. Jolene McCaleb addressed the Commission on behalf of the Petitioners. Ms. McCaleb stated that pursuant to the Commission's direction, the Petitioners, NMED representatives of other entities, the Commission's Administrative Secretary and the Commission's Counsel have been involved in a working group in an effort to obtain consensus on the proposed rules. Ms. McCaleb also stated that the process has been very constructive.

A notice to withdraw the petition has been filed with the Commission and the petitioners would like to request that the Commission continue the working group. It is the petitioner's intention to submit a revised set of proposed rules to the working group for their comments. The petitioners intend meeting with the working group at least once more and subsequently to file a revised petition that has attached to it a revised set of rules that is a product of that working group.

Item 6: Joint NMED/OCD petition to amend WQCC Regulation 3114 to increase ground water discharge permit fees and request to schedule hearing.

Marcy Leavitt, Chief Ground Water Quality Bureau (GWQB) and Jack Ford, Oil Conservation Division (OCD) requested that the Commission schedule a public hearing immediately following the September 12th meeting, to consider proposed changes to Section 3114 of the WQCC regulations. The proposal is to increase and modify the current fee structure that the agencies are working under for ground water discharge fees. The agencies are also asking that the Commission correct mistakes that were found throughout the regulations.

Ms. Brandvold stated that the fees outlined in the petition are not ready to go to hearing.

Mr. Glass moved to accept the petition and set a hearing for September 12, 2000. Mr. Johnson seconded the motion. The motion passed

Ms. Brandvold voted no.

Item 7: Formal WQCC approval of the 2000-2002 State of New Mexico 303(d) list.

Ms. Brandvold stated that it has been the practice of the Commission to request that material requiring action by the Commission be submitted at least a week prior to the meeting. The material for this agenda item was presented to the Commission this morning. Ms. Brandvold also stated that she would have a problem acting on the 303(d) list because she has not had a chance to review the final document.

Jim Davis, Chief, Surface Water Quality Bureau (SWQB), stated that the information on the draft 2000-2002 State of New Mexico 303(d) list was first presented to the Commission on March 14, 2000. This process has been followed previously on the 303(d) list and the 305(b) report where the Commission is provided copies of the draft documents at the time that they go to public notice. At the close of the public comment period the Commission is asked to take action.

Mr. Johnson moved to table approval of the 303(d) list until the Commission has had time to review the material. Ms. Brandvold seconded the motion.

Dr. Davis stated that the list was presented to the Commission at its March 14, 2000, meeting. There was a 30-day comment period with a 60-day extension granted by the Commission. The comment period closed on June 12, 2000. The SWQB is charged with developing the 303(d) list pursuant to §303(d) of the Federal Clean Water Act and 40 CFR 130.7. This year the two-year time frame for submission and approval of the list has changed. Because the federal regulations governing TMDLs have been held up, the submission requirements for the 303(d) have been held up also. The SWQB is proceeding with the list this year because there have been changes in the list over the last two years based on data that have been collected and analyzed.

Dr. Davis stated that it has been in the past the practice of the Department to develop this list. It is not a Commission document, and does not require Commission approval or adoption. Two years ago, the SWQB decided to approach the Commission as a means of expanding the public participation process in the review of the list, and to ensure that the process was open and accessible to interested parties.

Mr. Hunt asked Dr. Davis to explain the Bureau's definition of unknown sources. Dr. Davis stated that there have been discussions in the past regarding the accuracy of the 303(d) list. Where there are data that indicate that there is an exceedance of an applicable water quality standard, the Bureau will list that reach. Where there are no data, the Bureau will take no action.

Mr. Hunt asked if there would be any chance of short-term water quality issues impairing federal agency ability to deal with watershed conditions in the long-term due to unknown source contamination. Dr. Davis stated that he did not think this would happen.

Ms. Lee asked Dr. Davis to explain category N7, comments concerning impairment due to low or no instream flow. Dr. Davis stated that currently the Bureau anticipates doing nothing. The issue is water quantity, and the Bureau has no authority concerning water quantity issues. These are within the purview of the Office of the State Engineer and Interstate Stream Commission.

Ms. Brandvold asked Dr. Davis why atmospheric deposition is listed as a probable source for certain water bodies, and is this why those water bodies do not have a TMDL. If they did have a TMDL, how would the Bureau address atmospheric deposition? Dr. Davis stated that they are separated out because they are lakes or reservoirs that are not contained within the surface water segment that is otherwise listed in the list. These water bodies need to have TMDLs written for them.

Mr. Wilkinson asked Dr. Davis if the probable source of pollution for the Costilla Creek from Comanche Creek to Costilla Dam would be an example of chronic aluminum. Dr. Davis stated that perhaps that would be an example of chronic aluminum. The Department is currently investigating the appropriateness of the chronic and acute standards for aluminum.

Mr. Wilkinson stated that his concern is that from the Department of Game and Fish's standpoint, that would be considered a pristine fishery.

The motion made by Mr. Johnson was to table the approval of the 303(d) list until the Commission has had time to review the material. Ms. Brandvold seconded the motion. The motion passed unanimously.

Item 8: Appointment of members of the Utility Operators Certification Advisory Board.

Mr. Pat Hanson, Executive Secretary, NM Utility Operators Certification Advisory Board introduced two of the Board members, Mr. Charles Barnett and Mr. Robert George. A packet was distributed outlining the process used by the Board to solicit nominations and to make its recommendation to the Commission. Mr. Hanson explained that the Board had a quorum problem at its May meeting and did not make a final decision on one of the nominations until the Friday, July 7, 2000, meeting. The Board recommends the following operators to the Commission for appointment to the Board: Reymundo Gutierrez and Albert Mendez.

Chairman Maggiore stated that his office received a letter from the New Mexico Rural Water Association (NMRWA) on July 10, 2000, regarding their concerns with the Board's recommendations to the WQCC. Because of this letter, there may be value in putting off the appointments until the Commission can review the applications and try to understand the situation.

The letter from the President of the Rural Water Association, Debra L. Ingle, requests that the Commission restructure the composition of the New Mexico Utility Operators Certification Advisory Board to assure representation of the small utility systems and to achieve a balance in the geographical representation on the Board. It also requests that the Commission consider the organization's nomination of Mr. John Eckley to be appointed for a second term of office. Mr. Glass stated that if the Commission were to table the issue until the next meeting, in the intervening time the Board would again consider the same group of applicants, including Mr. Eckley, and still reach the same decision. It is possible that the letter from the NMRWA could change the opinion of the Board, but the Board has already considered the candidate recommended in the letter and a decision has already been made.

Mr. Barnett stated that the Board only recommends candidates, it is entirely the decision of the Commission who is appointed. The opinion of the Board for the nominations was a very considered opinion, and the vote was split. In his opinion, even if the Board did reconsider the nominations, the nominees would remain the same.

Mr. Glass stated that to give fair consideration to the NMRWA recommendation, the Commission would have to interview all the applicants.

Ms. Brandvold stated that she believes there was a letter from the NMRWA dealing with this issue dated March 9, 2000, presumably the Board considered that issue.

Mr. Joe Martinez, Chief Staff Officer NMRWA stated that the reason the Association is concerned about the recommendations before the Commission is because it will eliminate representation from the northern and northwestern areas of New Mexico. By acting on the recommendations, the Advisory Board will have five members from the southern sector of the State, eliminating the fair representation of the geography of the State and eliminating a representative of small systems. Another aspect of concern is that the Advisory Board has failed to make a decision in the course of its last four meetings. Only in last Friday's meeting did the southern sector of the State manage to make a decision to elect another nominee from southern New Mexico. The NMRWA is concerned that the composition of the Board does not meet Environmental Protection Agency (EPA) guidelines.

Mr. Gutierrez stated that the Advisory Board has made recommendations to the Commission and the Commission should rely somewhat on those recommendations. The State of New Mexico is diverse, both geographically and culturally; the Advisory Board should reflect this diversity.

Mr. Johnson stated that all three candidates are technically qualified to serve on the Advisory Board, the question is the balance of geographical representation and the representation on the Board of small water systems.

Mr. Barnett stated that the geographical representation on the Board changes according to the number of applications that are received.

Mr. George stated that the Board did not vote for a nominee other than Mr. Eckley because of any attempt to exclude Rural Water, they did not weigh Mr. Eckley as whether or not he was representing Rural Water. They weighed him based on his previous participation on the Board and his experience in comparison to the other candidates.

Mr. Glass moved to table the appointment of the members to the Utility Operators Certification Advisory Board until the next meeting on August 8, 2000 and requested a written response by the Chairman of the Board to the concerns expressed in the NMRWA letter to Chairman Maggiore. A copy of the Chairman's response letter is sent to the Commission Administrator no later than July 26, 2000.

Ms. Brandvold seconded the motion. The motion passed unanimously.

Item 9: Review and approval of the Order and Statement of Reasons for adoption of the proposed changes to 20 NMAC 7.5 – 7.7, relating to Wastewater Facility Construction Loans General Fund Provisions.

Mr. Johnson moved to approve the Order and Statement of Reasons as amended for adoption of the proposed changes to 20 NMAC 7.5 – 7.7, and authorize the Chairman to sign on behalf of the Commission. Mr. Gutierrez seconded the motion. The motion passed unanimously.

Item 10: Other Business.

Chairman Maggiore asked that the WQCC budget discussion be put on the Commissions August agenda for discussion.

Item 11: Next Meeting.

The next meeting of the WQCC will be held in Santa Fe on August 8, 2000.

Mr. Johnson moved to adjourn the meeting. Mr. Gutierrez seconded the motion. The motion passed unanimously.

Peter Maggiore 8/18/00
Chairperson