

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
April 10, 2001

The New Mexico Water Quality Control Commission (WQCC) meeting was held on April 10, 2001, at 9:00 a.m. in the State Land Office, Morgan Hall, 310 Old Santa Fe Trail, Santa Fe, New Mexico.

Members present:

Paul Ritzma	Acting Chair, Environment Department (NMED)
John Whipple	State Engineer & Interstate Stream Commission
David Johnson	State Parks Division
Julie Maitland	Department of Agriculture
Jack Kelly	Department of Game and Fish
Howard Hutchinson	Soil and Water Conservation Commission
Lynn Brandvold	Bureau of Mines and Mineral Resources
Conrad Keyes	Member-at-Large
Irene Lee	Member-at-Large

Members Absent:

Bill Olson	Oil Conservation Division
Paul Gutierrez	Member-at-Large

Others present:

Daniel Rubin	WQCC Counsel
Maria Voyles	WQCC Administrator
Melissa Monk	private citizen
Michael Jones	private citizen
Tamella L. Lakes	NMED/OGC
Dr. Jim Davis	NMED/SWQB
Steve Pierce	NMED/SWQB
John Hernandez	Elephant Butte Irrigation District

Steve Hattenbach NMED/OGC
Marcy Leavitt NMED/GWQB
Karen Menetrey NMED/GWQC
Mary Ann Menetry NMED/GWQC
Dennis McQuillan NMED/GWQC

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

Item 1: Roll call.

Maria Voyles, WQCC Administrator took roll call.

Item 2. - Approval of the Agenda.

Mr. Ritzma stated that Item #16 needed to be moved to #13. Mr. Johnson moved to approve the agenda as amended. Ms. Brandvold seconded the motion. The motion passed unanimously.

Item 3. - Approval of the Minutes of the January 9, 2001, meeting.

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

Item 4. – Start the 30-day comment period for the Ponil Creek chronic aluminum, temperature and turbidity TMDLs and the Middle Ponil Creek temperature and turbidity TMDLs.

Mr. David Hogge, NMED Surface Water Quality Bureau, gave a brief presentation. The SWQB did not ask the Commission to take any action at this time, only to start the 30-day comment period. A public meeting has been set up for Wednesday, May 2, 2001, from 6:30 PM to 8:30 PM at Cimarron Village Hall, Cimarron, New Mexico.

Item 5. – Briefing on NMED's ongoing work to amend the WQCC regulations to incorporate federal Safe Drinking Water Act Class V UIC regulation changes.

Ms. Menetrey, Underground Injection Coordinator and Marcy Leavitt, Bureau Chief, of the NMED Groundwater Quality Bureau (GWQB) appeared. Copies of the briefing paper and pamphlet that will be distributed to the public were provided. Changes were made to subparts 1, 3, and 5 of the pamphlet. The Bureau will come back in June with a draft of the regulations and request a public hearing for the August meeting. No action is required at this time by WQCC.

Mr. Hutchinson asked if this would affect the use of ground water storage. Ms. Menetrey stated it would not.

Ms. Brandvold requested some clarification be made to the pamphlet. Ms. Menetrey stated that the corrections would be made.

Item 6 – Action on NMED petition to amend WQCC regulation 20.6.2.3108 and 3109 NMAC to revise public notice procedures and scheduling of a public hearing. WQCC 01-07 (R)

Ms. Marcy Leavitt, Chief, Ground Water Quality Bureau requested a hearing be set on

20.6.2.3108 and 3109 and definition of 20.6.2.7. She stated the purpose of the proposed amendments is to improve public notification and participation for the process of application, modification and renewal of groundwater discharge permits. The GWQB requested that a public hearing be scheduled for the June 12, 2001, meeting. These amendments will allow the applicant and the public to request a hearing on the actual proposed permit rather than an initial application that is likely to change during the permitting process.

Ms. Jolene McCaleb, Counsel for the San Juan Water Commission requested that a hearing not be set before July 2001 to allow the San Juan Water Commission and the public time to respond to NMED's proposed changes.

Ms. Leavitt stated there has been a working group since established for the proposed regulation changes since 1999. Copies have been made available several times over the last year and a half.

The Bureau is planning to continue meeting with the work group and the public to incorporate any changes before the June 12, 2001, hearing date. The GWQB has several other administrative hearings that are scheduled for July and August on mining permits.

Mr. Johnson stated that normal procedure is not to postpone a hearing from going forward based on a concern of a constituent or affected party but to go to hearing and let those matters come to us during the hearing.

Mr. Johnson moved to accept the petition and set the hearing for June 12, 2001. Mr. Kelly seconded the motion. The motion passed unanimously.

Ms. Marcy Leavitt requested a verbatim transcript.

Mr. Hutchinson moved to have the Commission hear the case rather than a Hearing Officer. Mr. Johnson seconded the motion. The motion passed unanimously.

Mr. Ritzma moved to designate Mr. Johnson as Hearing Officer. Ms. Brandvold seconded the motion. The motion passed unanimously.

Item 7 – Briefing on the Ground Water Quality Bureau's plan to request public comments on draft uranium standard and amendment and proposal to add High Explosives (HE) to toxic pollutant list.

Mr. Dennis McQuillan, Geologist, NMED GWQB stated that the Bureau had briefed the Commission last year on this issue. The Bureau had hired a toxicologist to evaluate the existing standard for uranium as well as high explosives. The Bureau has received a deliverable draft report on uranium. Mr. McQuillan stated that the consultant has determined that New Mexico has populations sensitive to kidney disease, which is, according to the toxicologist, can be caused by uranium. Because of this the consultant has recommended a standard of .007 mg/l of uranium. The consultant is not recommending a numerical standard for high explosives, but rather they be added to the toxic pollutant list. The Bureau would like to put the documents out for a 45-day public comment period then come before the Commission in July with a formal recommendation

on the standards.

Mr. Hutchinson asked what kind of effect would the standard have on wells and distribution systems. Mr. McQuillan stated that the standard would not apply to public drinking water systems.

Item 8 – Report from Attorney General’s Office on EPA’s rejection of certain Standards as expressed in EPA’s letter of January 26, 2001, including following issues: (a) irrigation/flood exemption, (b) additional toxic numeric standards, (c) designated use of Rio Grande Basin at 20.6.4.101 NMAC, (d) incorporation of antidegradation policy and implementation plan to Continuing Planning Process, (e) definition of “surface waters of the state,” at 20.6.4.7RR NMAC. Item 12 - Approval of proposed letter to EPA in response to EPA’s letter of January 26, 2001.

Item 8 and Item 12 were combined.

Mr. Rubin stated that a copy of EPA’s letter dated January 26, 2001 was sent to all the Commissioners. This letter outlined several provisions of the Commissions Standards that EPA felt did not satisfy the requirements of the Clean Water Act (CWA). Mr. Rubin stated that the Commission has 90 days to respond to the letter. The letter responds to five areas of concern.

A. Irrigation and flood Control Structures Exemption

Mr. Hutchinson stated that if there were a violation of health or safety resulting from the structures there are other abatement of nuisance measures the Commission or affected people could use.

Mr. Hutchinson stated that it is within the Commission’s enforcement capacity and is spelled out in the Statute; it may be beneficial to include that citation in the letter.

Mr. John Hernandez, Elephant Butte Irrigation District, asked if the Commission’s Counsel could define the term Record of Decision and can anyone sue EPA or the State of New Mexico for failure to meet the terms of the Record of Decision. Mr. Rubin stated that he is not sure how a Record of Decision comes into play, but the Commission does need to send EPA a response. Part of a Record of Decision would be the outcome of any hearings held before the Commission.

Mr. Rubin stated that he has received a letter from Sam Becker, Acting Director, Water Quality Protection Division, EPA Region 6. It is in response to a letter sent by Mr. Rubin to the Acting Director, requesting clarification on what would be required by the Commission to satisfy the action requirement within 90-days. The letter states, “Given the clear requirement in section 303(c)(3) to initiate federal action, Region 6 must take preliminary steps to develop federal standards. However, it has been a long-standing policy of the Office of Water to work with States and authorized Tribes to allow the adoption of appropriate standards and avoid federal rulemaking if possible. Action by the Commission to set a rulemaking petition within the 90-day time frame described in the Act would be interpreted by EPA Region 6 as showing clear intent to

resolve these issues. If the State continues to make progress toward correcting the disapproved and previously approved standards identified as not meeting the requirements of the Act, the Region would be able to exercise some flexibility and not act to finalize a federal rule or recommend administrative action.”

Mr. Hernandez stated that the issue of what is called reasonable operation of flood control structures must be reviewed on a case-by-case basis.

Ms. Maitland moved to not release Counsels draft letter to EPA to the public until it is finalized. Mr. Johnson seconded the motion. The motion passed unanimously.

Mr. Rubin stated that NMSA 74-6-10 might deal with Mr. Hutchinson’s question on enforcement. Mr. Rubin stated that he would add to the letter a reference to section 74-6-13. The language would state that the exemption does not supercede any other rights as referenced in section 74-6-13.

B. Designated use of segment 2101 of the Rio Grande Basin

Mr. Rubin stated that EPA did not include Aquatic Life and Human Health Criteria for Priority Pollutants in the Standards and he felt that the EPA over reached on this. Mr. Rubin believed everything was covered in his letter. The department will be asking for further clarification. Mr. Rubin read the letter from Mr. Davis to Mr. Becker, dated January 23, 2001, into the record

C. Aquatic Life and Human Health Criteria for Priority Pollutants

Mr. Rubin stated that at the last meeting the use for this section was left as a secondary contact. EPA stated that there is swimming there and that fact is not contested; therefore, it should be a primary contact. A hearing needs to be scheduled to comply with EPA.

D. Updates to the CPP to implement the antidegradation policy

Mr. Rubin stated that Surface Water Quality is working on an update to the CPP to provide procedures to implement an antidegradation policy. The SWQB is working with the EPA. When SWQB has a working CCP it is expected to bring it before the WQCC for formal approval. The SWQB sent a draft to EPA on March 29, 2001.

D. Amendments to the Standards with respect to the definition of “Surface waters of the State” and of the reaches of the Cimarron River in the Canadian River Basin

Mr. Rubin will attach copies of the petitions with respect to the definition of “Surface waters of the State” and of the reaches of the Cimarron River in the Canadian River Basin. Mr. Rubin would like a hearing set as soon as possible.

Hearing is set for June 12, 2001.

Item 9. – Deliberation on scheduling hearing on portion of triennial review record left open re: designated uses of Rio Grande Basin at 20.6.4.101 NMAC, and related discovery matters.

Mr. Hernandez stated that at the lower end of the reach the river moves in and out of New Mexico. While the river is in Texas it is designated as primary contact. He believes that a standard can be set above that point. The Environmental Improvement Board (EIB) would like to keep the reach intact.

Mr. Johnson moved to set a hearing in September. Mr. Hutchinson seconded the motion.

Mr. Keyes stated that October would be a better time for the hearing because of the workload amount of each party.

Mr. Johnson amended his motion to set the hearing date for October 9, 2001. Mr. Hutchinson seconded the motion.

The motion passed. Mr. Ritzma voted no.

Mr. Rubin suggested that the parties wishing to provide technical testimony file a statement of intent with the WQCC at least 20 days prior to the hearing. Mr. Rubin also suggested the Commission eliminate post-hearing submittals, request a written transcript of the proceeding, and consider listing in the hearing notice the possibility of splitting the reach.

Ms. Maitland moved to ask the parties to submit, 20 days prior to October 9, 2001, a notice of intent to present technical or other testimony; no post hearing submissions will be accepted unless a motion is submitted requesting post hearing submittals, and a written transcript be done of the hearing. Mr. Hutchinson seconded the motion. The motion passed unanimously.

Mr. Keyes stated that the Texas Natural Conservation Commission should be on the mailing list for this hearing.

Mr. Ritzma stated that the Commission should instruct Counsel to obtain information on how Texas went about setting a primary contact standard for their reach of the Rio Grande River.

Item 10. – Action on NMED's petition to amend sections 20.6.4.7, 20.6.4.8, 20.6.4.306, and 20.6.4.309 NMAC of the Commission's Standards for Interstate and Intrastate Surface Waters. WQCC 01-06(R), and scheduling of a public hearing.

Mr. Steve Pierce, SWQB stated that the Bureau is requesting a hearing to primarily address items that were disapproved by EPA in their letter. The first part of the petition for hearing concerns a change to 20.6.4.7 RR, the definition of "Surface Waters of the State". The second proposed change is to the anti-degradation policy, and the last two proposed changes involve segments 306 and 309. The streams were inadvertently downgraded without the required use attainability analysis. The Bureau is requesting that a hearing be scheduled in conjunction with the

Commissions regularly scheduled June meeting, and that the Commission sit as a whole instead of contracting a Hearing Officer.

Ms. Maitland moved to accept the petition and set a hearing date for June 12, 2001. Ms. Brandvold seconded the motion. The motion passed unanimously.

Mr. Johnson volunteered to sit as Hearing Officer.

Mr. Johnson moved to have a written transcript of the proceedings. Mr. Keyes seconded the motion. The motion passed unanimously.

Item 11. – Report from SWQB on (a) status of amendments to CCP, and (b) additional toxic numeric standards.

Mr. Steve Pierce, SWQB stated that the SWQB has reviewed around 1400 pages of documents sent from EPA to determine if there are various compounds that the Bureau should propose that the Commission adopt Human Health Priority Pollutant Criteria for. The Bureau would not like to bring forth a petition until they have had a chance to review all the data, a complete review may be done in the next 30 days.

Mr. Hutchinson asked if the letter the Commission has been working off of is basically a notice that certain standards will be rejected. Mr. Pierce stated that EPA could only disapprove items that were changed during the Triennial Review; no change was made involving Priority Pollutants or Human Health. All EPA can do is make a recommendation to the Administrator that they find that a section that was previously approved is now inconsistent with the Clean Water Act (CWA). The Bureau believes that EPA has not yet made any recommendations to the Administrator.

Mr. Hutchinson stated that the letter from EPA brings up some troubling points about the timeline not being followed by EPA and it brings up enough issues on the violations of that timeline by EPA to leave the WQCC's complete set of Standards open for judicial review and a challenge by third parties. Mr. Hutchinson also stated that it is almost time to hold another Triennial Review and that his concerns are motivated by an interest to see that the taxpayers money not be wasted on pointless litigation.

Mr. Pierce stated that EPA considers a Triennial Review to start three years from the date that the revised Standards were submitted to EPA, which would have been last January. Based on that, the next Triennial Review would not come up until 2003.

Mr. Rubin stated that if an interested member of the public or an interested group took any action against EPA, the Commission could always intervene as an interested party.

Mr. Jim Davis, Chief SWQB, gave the Commission a brief update on the Bureaus preliminary effort to revise the Continuing Planning Process (CPP) document. The Bureau has grappled with updating the document because there is no guidance from EPA Region 6 and only preliminary guidance from Region 4 in Atlanta Georgia. The Bureau has prepared a comprehensive but preliminary draft update to the CPP document, which includes the Bureaus first effort to address

the anti-degradation implementation question. The draft was transmitted to EPA for consultation purposes on March 29, 2001. To date the Bureau has not received an official response regarding the document from EPA. EPA has stated verbally that they have begun a preliminary review of the document, and that the initiation of this effort will satisfy the 90-day requirement to answer that was highlighted in the disapproval letter of January 23, 2001. When a clean draft is done it will be presented to the Commission for review and will follow the Commission guidelines for public review and approval. Mr. Davis stated that he could not give the Commission an estimated calendar date for the submission of the document to the WQCC.

Mr. Rubin asked Mr. Pierce if he would be amenable to having his memo regarding the priority pollutants attached to the letter that the Commission will be sending to EPA. Mr. Pierce stated that no, he did not have a problem with sending the memo to EPA.

Item 12. (155) Approval of proposed letter to EPA in response to EPA's letter of January 26, 2001.

Mr. Rubin stated that he would like to add two sentences to the draft letter to EPA. The first sentence is "EPA is also been requested to send all data relating to section 308 priority pollutant scans." The second is "Surface Water Quality Bureau estimates that it will take approximately 30 days to review the information provided by EPA in the spreadsheets; I attach an internal memo from NMED on this point."

Mr. Rubin stated that he would be attaching copies of the petition and hearing notice for the June and October meetings.

Mr. Ritzma stated that the draft letter to Mr. Sam Becker with changes made to section A, concerning additional citations to the statutes on abatement of nuisance, additional changes in paragraph C, a change in section E from "public meeting" to "public hearing", and attachments which include a memo from Dr. Davis dated April 9, 2001, and the petitions and request hearings that were approved by the WQCC.

Mr. Ritzma stated that he would entertain a motion to approve the letter with the above listed changes.

Mr. Johnson moved to approve the letter with the changes outlined by Mr. Ritzma. Ms. Maitland seconded the motion.

Mr. Johnson amended his motion to add a provision that Mr. Peter Maggiore, Chairman of the WQCC, sign the letter.

The motion passed unanimously.

Item 13. – Setting of hearing, case No. WQCC 01-05 (CO) – NMED v. Henry Medina and Southwest Septic Transport Co.

Ms. Marcy Leavitt, Chief, GWQB read a letter that was prepared by NMED Counsel. Both parties have agreed to stay the hearing. A stipulated motion and form of Order will be

forthcoming. No action by WQCC is necessary at this time.

Mr. Rubin suggested that in the future the Commission should seek a joint letter signed by both parties.

New Roll Call from lunch

X	Paul Ritzma	Acting Chair, Environment Department (NMED)
X	John Whipple	State Engineer & Interstate Stream Commission
X	David Johnson	State Parks Division
X	Julie Maitland	Department of Agriculture
X	Jack Kelly	Department of Game and Fish
X	Howard Hutchinson	Soil and Water Conservation Commission
X	Lynn Brandvold	Bureau of Mines and Mineral Resources
X	Conrad Keyes	Member-at-Large
X	Irene Lee	Member-at-Large

Item 14. – Hearing – In the Matter of a Petition for Alternative Abatement Standards for the

Cunningham Hill Mine Reclamation Project.

Kathy Townsend Court Reporters prepared the transcript.

A roll call vote was conducted and all members present agreed to enter into executive session.

Paul Ritzma	Acting Chair, Environment Department (NMED)
John Whipple	State Engineer & Interstate Stream Commission
David Johnson	State Parks Division
Julie Maitland	Department of Agriculture
Jack Kelly	Department of Game and Fish
Howard Hutchinson	Soil and Water Conservation Commission
Lynn Brandvold	Bureau of Mines and Mineral Resources
Conrad Keyes	Member-at-Large
Irene Lee	Member-at-Large

Return from executive session.

Mr. Ritzma moved that based on the evidence submitted and the testimony presented by all the parties and based on the fact that it is uncontroversial, LAC Minerals has met the applicable requirements of section 401. 3 of 20 NMAC 6.2 and that their proposed alternative number two be accepted by this Commission and that an order be drafted by council for the Commission setting forth its decision in this matter. Ms. Maitland seconded the motion. . The motion passed unanimously.

Mr. Hutchinson moved to have the Chairman sign the order on behalf of the commission. Ms. Maitland seconded the motion. The motion passed unanimously.

Mr. Rubin stated that the Order needs to reflect the reason for the vote. The proposed reasons are that, with respect to alternative 2, as set forth in the record, there is no reasonable relationship between the economic and social cost and benefits including attainment of the standards set forth in section 4103 to be obtained, the proposed alternative abatement standards are technically achievable and cost-benefit justifiable and compliance with the proposed alternative abatement standards will not create a present or future hazard to public health or undue damage to property.

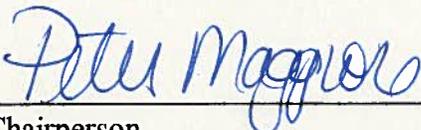
Mr. Hutchinson moved to accept the Statement of Reasons. Mr. Ritzma seconded the motion. The motion passed unanimously.

Item 15. – Other Business.

A Notice of Appeal and Petition for Hearing was presented to the Commission from Zia Dairy. It will be placed on the agenda for May 8, 2001.

Item 16. – Next meeting.

Ms. Maitland moved to hold the next meeting on May 8, 2001. Mr. Ritzma seconded the motion. The motion passed unanimously.



Chairperson