

**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION**

1190 St. Francis Drive, Room N2150

Post Office Box 26110

Santa Fe, New Mexico 87502

Telephone (505) 827-2425 Fax (505) 827-0310



Constituent Agencies

Environment Department
Office of State Engineer
Game and Fish Department
Oil Conservation Division
Department of Agriculture
State Parks Division
Soil and Water Conservation Commission
Bureau of Geology and Mineral Resources
Municipal/County Representative
Members-at Large

New Mexico Water Quality Control Commission Meeting

May 8, 2007

9:00 a.m.

New Mexico State Capitol Building

Room 317

490 Old Santa Fe Trail

Santa Fe, New Mexico 87501

MEMBERS PRESENT:

Cindy Padilla	NMED/Deputy Secretary, Acting Chair
Greg Lewis	Office of the State Engineer
Carl Chavez	Oil Conservation Division (in lieu of Mr. Fesmire)
Larry Dominguez	Department of Agriculture
Steve Glass	City of Albuquerque – Municipal/County Representative
Howard Hutchinson	Soil and Water Conservation Commission
Peggy Johnson	Bureau of Geology and Mineral Resources
Maxine Goad	Member-at-Large

MEMBERS ABSENT:

Cheryl Bada	State Parks Division
Mike Sloane	Department of Game & Fish
Edward Vigil	Member-at-Large
Fred Lujan	Member-at-Large

OTHERS PRESENT:

Jolene McCaleb, San Juan Water Com.	Mark Dubbin, City of Las Cruces
Charles de Saillan, NMED/OGC	Heidi Henderson, NMED/SWQB

Jane DeRose Bamman, NMED/SWQB
Stephanie Stringer, NMED/SWQB
Bruce Gallaher, LANL
Sarah Piltch, NMELC
Zachary Shandler, AG's Office
Rick Moore, Phelps Dodge
Stuart Butzier, Modrall law firm
Bill Olson, NMED/GWB
Marcy Leavitt, SWQB

Lynette Guerava, NMED/SWQB
Shelly Drinkard, NMED/SWQB
Phil Wardwell, LANL
Dale Doremes, NMED/SWQB
Sally Malave, AG's Office
Joyce Medina, NMED
John Kelly, Modrall law firm
Mary Ann Menetrey, NMED/GWB

Acting Chair Cindy Padilla, called the meeting of the WQCC to order at 9:05 a.m

Item 1. Roll Call:

The Commission administrator took roll and noted a quorum was present. Ms. Padilla welcomed Mr. Dominguez as the new NMDA member of the Commission. Mr. Dominguez replaces Julie Maitland.

Ms. Padilla mentioned that before any action is taken on the agenda, she would like to reverse the order of Items 3 and 4. There was discussion regarding whether all parties involved in those two were present to agree to such agenda change. The parties informally agreed to the agenda change.

Ms. Goad noted that the next meeting of the Commission would take place May 22, 2007, not June 12, 2007 as indicated by the agenda.

Item 2. Approval of Agenda

Action: Mr. Hutchinson moved to approve the agenda with the Chair's suggested reversal of Items 3 and 4 as well as Ms. Goad's Item 7 change. Mr. Lewis seconded. The motion passed unanimously.

Item 3. Decision on Tyrone's Motion to Postpone the Tyrone Remand Proceeding formerly #4 until November of 2007, WQCC 03-12 (A) and WQCC 03-13 (A). Zachary Shandler, Commission Counsel.

Discussions by all parties and the Commission were transcribed by Kathy Townsend Court Reporters, 110 Twelfth Street, NW, Albuquerque, New Mexico 87102. A copy of the transcript is available for review in the office of the Commission Administrator, 1190 St. Francis Drive, Runnels Building Rm. 2150, Santa Fe, New Mexico 85705.

Action: Ms. Johnson moved to vacate the June hearing date and reschedule WQCC 03-12 (A) and WQCC 03-13 (A), the Tyrone remand matter, for hearing July 23, 24 and 25, 2007 and August 6 through 10, 2007. Mr. Glass seconded. The motion passed unanimously.

Item 4. Approval of the Final Draft TMDL for the Main Stem of the Lower Rio Grande (from the International Boundary with Mexico to Elephant Butte Dam). Shelly Drinkard, NMED/SWQB.

Ms. Drinkard discussed the scope of the TMDL, as well as various federal and state requirements relating to its adoption, including public meetings, public comments and the publication of notices.

There was lengthy Commission discussion regarding any comments received by the Bureau in response to its public outreach program and also the issue of storm water runoff. With respect to the outreach program, Ms. Leavitt of the Surface Water Quality Bureau, stated that no responses were received following the Bureau's replies to comments and inquiries.

Mark Dubbin representing the City of Las Cruces, noted that 2004 was the year during which water samples were taken and that it was Las Cruces' driest in many years. He further stated that he did not think that 2004 should be considered a representative rainfall year. Additionally, he noted that there were only three samples taken over an eight month period. He mentioned that Las Cruces has had a discharge plan in place and new permit was issued by EPA September 2006. He additionally noted that there are only two discharge points in the City. He stated that among other things, the City would like to see water sampling performed in years more representative of the local average rainfall than 2004.

Mr. Hutchison asked Mr. Dubbin what impact the adoption of the TMDL would have on the City of Las Cruces. Mr. Dubbin mentioned that the line was drawn between Phase I and Phase II municipalities at a population of 100,000. He went on to state that the City's most recent numbers indicated a population of approximately 70,000. He noted that the City would probably fall under the Phase I requirements by 2010-2011. Mr. Hutchison asked if the TMDL were adopted would it place an undue burden on the City. Mr. Dubbin stated that he was not sure of the total extent of the TMDL's impact.

Marcy Leavitt, on behalf of the Bureau, and the Commission discussed the City's issues. Ms. Leavitt stated that it was important to note that NMED has no enforcement authority with respect to TMDLs, however, EPA could presumably take enforcement action with respect to discharge permits under its authority.

There was Commission discussion regarding the timing and the impact of the Bureau's sampling upon the City. Mr. Dubbin stated that because of the lack of rainfall, the two City storm water discharge outfalls were dry at the time of the sampling. He further stated that Las Cruces would like to see more data with respect to the TMDL.

Mr. Glass stated that in his view the assertion that the data was insufficient to form the basis for the TMDL was not accurate and that in fact the existence of a TMDL would make available Clean Water Act 319 funding for the kinds of studies Mr. Dubbin would like to see performed. Additionally, Mr. Glass noted that establishing and incorporating this TMDL would encourage the award of grant money from EPA. He also mentioned that in his opinion it is a reasonable conclusion that there is bacterial contamination in excess of the State standards and that the establishment of the TMDL would actually benefit the City of Las Cruces in future planning. He also pointed out that the wastewater treatment plants will have a permit with bacteria limits regardless of the TMDL. In addition, the small MS4 permits will be issued regardless of the TMDL. He also mentioned that a TMDL is calculated based on the WQS and that sampling during periods of higher flows from the Las Cruces storm water outfalls would likely have detected higher levels of bacteria into the Rio Grande and resulted in a more stringent TMDL.

Mr. Hutchinson asked what programs would be available after the establishment of the TMDL for the City of Las Cruces to address the unfunded mandate. Ms. Leavitt stated that the TMDL does open the door for 319 funds. She also noted that there is also a very active watershed group in this area that she felt would promote obtaining that funding.

Mr. Glass stated that as a matter of clarification, it was his understanding that there is no potential for fines to be incurred by the City of Las Cruces because there is no enforceability power relating to a TMDL that it is merely a computation. Ms. Leavitt confirmed his understanding as being correct. She noted that the enforceability issues relate to the NPDES permit and those issues are completely independent of the TMDL.

The Chair suggested that the Department continue to work with EPA and perhaps work more closely with the State's municipalities and community organizations in relaying information and providing assistance regarding water related issues.

Mr. Glass asked if this TMDL fell under the group covered by the Forest Guardians consent decree. Ms. Leavitt noted that this TMDL was not part of that group but that the Department was required to deliver a certain number of TMDLs to EPA each year.

Action: Mr. Glass moved that the Commission adopt the TMDL for the Main Stem of the Lower Rio Grande, from the International Boundary with Mexico to Elephant Butte Dam into the Water Quality Management Plan. Ms. Goad seconded.

Mr. Glass explained his motion noting that funding is necessary for studies regarding sources of contamination to be performed and that additional funding is necessary for implementation of best management practices (BMPs). Approving the TMDL will open opportunities for Clean Water Act 319 funding in the watershed to perform studies as well as to implement BMPs. Because the water body is listed on the 303(d) List and has a TMDL, water quality improvement projects in this watershed will be prioritized by EPA for 319 funds.

The motion passed. Mr. Dominguez abstained.

Item 5. Final review and approval of the State of New Mexico Integrated Clean Water Act 2006-2008 §303(d)/§303(b) Report and List of Assessed Surface Waters. Lynette Guevara/Stephanie Stringer NMED/SWQB

Ms. Guevara noted that the Commission had previously been provided with drafts of the report and list and that she and Ms. Stringer were at today's meeting to present the final documents. Additionally, she mentioned that the bureau had based the report on the EPA's 2006 Integrated Report Guidance format. She stated that the impairment status for this list was determined using 20.6.4 NMAC as amended through February 16, 2006 and the bureau's current assessment protocols. She set out the steps the bureau had taken in preparing the report and list, including its primary focus, the public participation process, the bureau's response to public comments and what the bureau sees as upcoming issues. She also noted that the 2008-2010 Integrated List development would commence once the 2006-2008 Report and List is submitted to the EPA for approval.

Ms. Stringer stated that the report portion provided to the Commission for review had been her responsibility and that she would be answering any questions relating to the report.

The Chair asked Ms. Guevara and Ms. Stringer if either of them had anything they wished to specifically address with respect to the report and list that they deemed to be noteworthy significant issues that should be discussed. Ms. Guevara stated that she wanted to acknowledge Ms. Stringer's work in developing the new report format and that she felt it was excellent and further that it followed EPA guidance perfectly.

There was Commission discussion regarding the notice procedures that had been followed in the public participation process as well as the identification of typographical errors.

There was a discussion relating to sediment assessment protocols in light of the recent Rio Puerco TMDL.

There was also a lengthy discussion regarding the increase in water borne diseases as reflected in the report.

Ms. Goad requested that the Commission review the report on a page-by-page basis.

As it was being reviewed, report text revisions were made and additional typographical errors were noted. There was also a brief discussion relating to undated items in the report which was followed by a question as to when EPA might approve new standards. It was noted that the dates in question would be inserted when the bureau had that information from EPA.

The Chair thanked Ms. Goad for her careful review of the report and bringing her concerns to the attention of the Commission.

Phil Wardwell, representing Los Alamos National Security, LLC, a contractor for Los Alamos National Laboratories, mentioned that he was not aware that responses to comments were on the web and asked if there were any responses and if so, he would appreciate receiving copies of them. Ms. Guevara noted that in the public notice it states that responses are available on the web and further indicates how they can be obtained in the event an individual cannot download the information. Additionally, she stated that it has always been the bureau practice to accommodate anyone who wants information relating to bureau activities.

Mr. Hutchinson asked Mr. Wardwell if, after his cursory review of the comments and responses, there were any items that he had noted as specifically being of concern. Mr. Wardwell stated that from his perspective there was the matter of how impairment by mother nature could be accommodated and that he would appreciate some consideration being given to that issue.

There was additional discussion regarding the report and list with respect to LANL.

Action: Mr. Glass moved that the Commission adopt, as revised, the Integrated Clean Water Act 2006-2008 §303(d)/§303(b) Report and List of Assessed Surface Waters. Ms. Goad seconded. The motion passed unanimously.

Item 6. Other Business

The Chair noted that this summer NMED will host a series of State-wide community meetings to inform citizens about the structure of the Department as well as its activities and responsibilities relating to all aspect of the environment. The meetings will also provide a forum for people to ask questions and present environmental concerns. She thanked Commissioner Johnson for attending the meeting, on very short notice, that was held in Socorro. She also stated that she would email a list of the dates, places and times of the meetings to the Commissioners. She mentioned that the next meeting would be held May 9, 2007 in Moriarty from 6:00 p.m. until 8:00 p.m. She went on to say that two meetings have been held, one in Socorro and one in Silver City.

Ms. Padilla said that she thought it would be helpful to review the Commission's schedule for the near future. She noted the May 22 and 23, 2007 Chino Mines Lee Hill hearing and also that she anticipated Felicia Orth bringing in several cases in which there has been no activity for extended period of time for disposition by the Commission. There was discussion regarding matters that will be before the Commission and various scheduling combinations taking into consideration the May 22 and 23 dates and the June 12 regular meeting date. It was decided that just the hearing would take place May 22 and 23 and all other items would be placed on the regular June 12 meeting agenda.

The Chair noted that Ms. Leavitt had indicated there would be a number of TMDLs for the Commission's consideration at the August 14, 2007 meeting.

She again noted that there will be two new Commission members, one from the Department of Health the other will be an at-large member.

**Item 7. Special Meeting: Hearing May 22 and 23, 2007, Santa Fe, New Mexico
Next Regular Meeting: June 12, 2007**

Item 8. Adjournment:

Mr. Glass moved for adjournment. Ms. Chavez seconded. The motion passed unanimously. The meeting adjourned at 12:30 p.m.



Cindy Padilla, Acting Chair
Water Quality Control Commission