

STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION
1190 St. Francis Drive
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(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
June 12, 2001

The New Mexico Water Quality Control Commission (WQCC) meeting was held on June 12, 2001, at 9:00 a.m. at the State Capitol Building, Room 321, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico.

Members present:

Peter Maggione	Chair, New Mexico Environment Department
John Whipple	State Engineer & Interstate Stream Commission
David Johnson	State Parks Division
Julie Maitland	Department of Agriculture
Larry Bell	Department of Game and Fish
Howard Hutchinson	Soil and Water Conservation Commission
Lynn Brandvold	Bureau of Geology and Mineral Resources
Bill Olson	Oil Conservation Division
Dr. Conrad Keyes	Member-at-Large
Irene Lee	Member-at-Large

Members Absent:

Paul Gutierrez	Member-at-Large
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Others present:

Daniel Rubin	WQCC Counsel
Maria Voyles	WQCC Administrator
Sharon Lombardi	private citizen
Ken Miller	private citizen
Kelly Bitner	private citizen
Scott Cameron	Forest Guardians

Dr. Jim Davis	NMED
Dan Howe	private citizen
James L. R. Brown	private citizen
J. Steven Glass	private citizen
Bonnie Rabe	NMDA
Mike Saladen	LANL
Bruce Thompson	UNM
Karen Menetrey	NMED
Jay Lazarus	Glorieta Geoscience
Cathy Ratcliff	Glorieta Geoscience
Maxine Goad	Sierra Club
Maura Hanning	NMED
Caren Cowan	NM Cattle Growers Association
Bill Brancard	private citizen
Joe Culbertson, Jr.	NM Cattle Growers Association
Geoffrey Fetts	private citizen
Hope Buechler	private citizen
Andrew Kelton	private citizen
Erik Galloway	NMED
Mary Bernstein	private citizen
Marcy Leavitt	NMED
John Hernandez	Elephant Butte Irrigation District
Sue E. Umshler	private citizen
Jay Stein	Simms/Brockman for City of Las Cruces
Stephanie Stringer	NMED
Steven Pierce	NMED / SWQB
Joseph Brunner	private citizen

Chairman Maggiore called the meeting to order at 9:10 a.m.

Item 1: Roll call.

Maria Voyles, WQCC Administrator took roll call.

Item 2: Approval of the agenda.

Commissioner Olson moved to handle items 10 and 11 before the hearings. Dr. Keyes seconded the motion. Ms. Brandvold moved to accept the amended agenda. Dr. Keyes seconded the motion. The motion passed unanimously.

Item 3: Approval of the minutes of the April 10, 2001, meeting.

Ms. Brandvold moved to accept the minutes as corrected. Dr. Keyes seconded the motion. Commissioner Olson abstained, as he was not present at the April 10, 2001 meeting. The motion passed.

Item 4: Approval of the minutes of the May 8, 2001, meeting.

Commissioner Hutchinson moved to accept the minutes as corrected. Commissioner Johnson seconded the motion. The motion passed unanimously.

Item 5. Letters from Forest Guardians and San Juan County. The letter from Forest Guardians includes a request that the Commission reset the October 2001 hearing on Rio Grande segment 2101 to an earlier date.

Dan Rubin stated that the letter from the Forest Guardians presented three concerns with the response to EPA's record of decision. (concerning disapproval of certain sections of changes to water quality standards adopted during the triennial review)

1. The irrigation and flood control exemption.
Mr. Rubin stated that the Forest Guardians requested that the Commission do something about it. Mr. Rubin stated that the statute binds the Commission and that the standards need to reflect the exemption. Mr. Rubin also stated that concerns were raised about whether there should be a definition of reasonable operation at such facilities and that such a definition may be adopted in the future.
2. Regarding Rio Grande segment 2101 (20.6.4.101 NMAC)
Mr. Rubin stated that there is a hearing set for October 9, 2001, on what the designated recreational use of this segment should be, and possibly to bifurcate the segment. Forest Guardians stated that in light of the fact that there are people swimming in it during the summer, that they would like to see the use changed before October.
3. A list of priority toxic pollutants (PTPs)
Mr. Rubin stated that the Forest Guardians were concerned that the Commission has not established numerical standards for a number of PTPs. The Forest Guardians submitted data sheets that have become part of the record.

Scott Cameron, Forest Guardians, stated that they would like to see the Rio Grande Section 2101 issue taken up sooner. Mr. Cameron also stated that it appears from the EPA record of decision that the use needs to be set as primary contact. Mr. Cameron stated that Forest Guardians think that handing out blanket exemptions to certain interest groups sets a bad precedent and that issuing blanket exemptions goes against objectives of the water quality standards and the Clean Water Act. Mr. Cameron stated that they have been working with the Surface Water Quality Bureau and are aware that the EPA has not provided the information that they based their finding on regarding establishment of standards for PTP's. Forest Guardians sent a freedom of information (FOIA) request on June 8, 2001, to obtain the data. Forest Guardians feels that the burden should be on industry rather than the public or fish and wildlife, and that if the materials that EPA used to make this finding show that there is a reasonable expectation that these pollutants are interfering with designated uses, then the criteria must be adopted. Mr. Cameron also

stated that the Forest Guardians does not want to see the state adopt criteria for pollutants that do not exist in New Mexico.

Commissioner Johnson asked Dr. Hernandez if there is a working group in southern New Mexico looking at the issue of proper recreation use designation.

Dr. Hernandez responded that he considers this a continuation of the Triennial Review process. Dr. Hernandez stated that the October date is the earliest they can compile the data they have been gathering. Data have been collected from all of the drains along this stretch of the river. Dr. Hernandez stated that the process is going to be difficult, as the standards for Texas and New Mexico have to agree under the Clean Water Act for the common reach of the Rio Grande. Dr. Hernandez requested that the October 9, 2001, hearing be affirmed and that the Commission be very clear concerning what the hearing is to be about and that it be viewed an extension of the triennial review. Dr. Hernandez stated that the only issue that should be discussed on October 9, 2001, is designation – primary or secondary. Dr. Hernandez also stated that the earliest they could be prepared to cover the items is October 9, 2001

Commissioner Keyes reminded the Commission that they need to ensure that Texas was aware of this since Texas segment 2308 coincides with the lower end of New Mexico segment 20.6.4.101 NMAC.

Commissioner Hutchinson stated that he did not feel this was a delay, rather a chance for everyone to gather information.

Mr. Rubin stated that a response is not required. Mr. Rubin prepared a letter to Forest Guardians stating that the commission received the letter.

Jay Stein, of Stein and Brockman, representing the City Las Cruces, would like to concur with Dr. Hernandez to treat this as a continuance of the Triennial Review because the City discharges its effluent to the Rio Grande under an NPDES Permit. Mr. Stein also stated that they too require until October to collect data.

Mr. Rubin will develop a draft response for the Commission's approval.

Mr. Rubin stated that the letter from the San Juan Water Commission is concerned with the process the Commission uses to set a hearing on rulemaking or standards petition. Their concern is that sometimes there is not sufficient time for the public to review the petition prior to the setting of the hearing.

Commissioner Johnson stated he did not recall from the meeting that the Commission fully understood that San Juan Water Commission opposition was based on a procedural matter. That is why in the second paragraph that he and Chairman Ritzma are quoted as expressing their opinions about whether the Commission should set the hearing based on the concerns of the language. Commissioner Johnson also stated that he felt that they clarified it in the letter, however, he did not think that there was a misunderstanding at the meeting because it was not presented as a procedural matter.

Item 6. Petition from Game and Fish Department to use Antimycin A to renovate the upper reaches of West Fork Gila River in Catron County.

Chuck Hayes, Department of Game and Fish (DGF), stated that the DGF petition is similar to that presented last year. The difference is that DGF is looking at a schedule for next summer. DGF provided copies of the petition to the Commission.

Mr. Rubin stated that there is nothing for the Commission to do at this time.

Chairman Maggiore asked that the Department staff reviews the petition and report back to the Commission at the next meeting.

Dr. Davis stated that they have done a preliminary review and will provide a report to the Commission at the next meeting.

Dan Howe stated that he felt it was germane that we are in the NEPA process for the proposed use of Anticymin A in the Upper West Fork of the Gila River drainage and that the Commission is being asked to approve something prior to the NEPA process being completed.

Mr. Rubin stated that the Commission has 90 days to decide whether to hold a hearing. A decision to hold a hearing can be done after a NEPA analysis is done.

Mr. Howe questioned whether DGF would have to petition for a renewal for calendar year 2002 since it will be deployed in 2002.

Mr. Rubin stated that the Commission has the discretion as to how long the variance is valid.

Mr. Howe stated that in the case of Costilla Creek, the hearing officer stated that this was not a variance. Mr. Howe wondered if that was the case here – that this is not a variance.

Mr. Rubin stated that the Commission follows the variance hearing procedure but that does not mean that we are considering this a variance. Mr. Rubin will discuss this issue with Mr. Howe.

Commissioner Hutchinson wondered if an NPDES permit is needed.

David Probst, DGF, responded that the DGF had gotten the certification through the New Mexico Department of Agriculture and they have not been requested to get another one.

Chairman Maggiore requested that the Department counsel provide DGF with the current court cases and related matters.

Commissioner Hutchinson asked if EPA had provided any guidance on issuance of NPDES evaluations, should one be requested.

Dr. Davis responded that NMED have not received any guidance and that the issue has not yet been resolved, by EPA.

Chairman Maggiore stated that he would have a letter to EPA requesting clarification prepared.

Commissioner Keyes pointed out a typographical error in the handout from DGF.

Mr. Hayes stated that it is actually for 2002.

Item 7. Action on NMED petition to amend sections 20.6.2.1 through 20.6.2.399 and sections 20.6.2.5000 through 20.6.2.5300 of the WQCC regulations to revise Underground Injection Control well requirements and to make general changes, and scheduling of a public hearing.

Karen Menetry and Marcy Leavitt appeared on behalf of the Department –Ground Water Quality Bureau. Ms. Menetry stated that they would like to have a hearing following the August 14, 2001, meeting. The August 14, 2001, hearing is required to meet a September deadline required by the grant agreement with the EPA. The Ground Water Quality Bureau provided copies of the petition. The body of the petition was read into the record.

Commissioner Hutchinson stated that it appears there are some parties that would be interested in this and were not notified. (ex. New Mexico Petroleum Marketers Association)

Commissioner Olson questioned whether the petition and rule changes were distributed or made available to the public prior to this meeting.

Ms. Menetry stated that they did not provide official public notice, they did however, provide a draft of the regulation changes.

Mr. Rubin stated that there is a notice requirement that follows the filing of the petition. The decision to hold a hearing is not reviewable.

Commissioner Johnson moved that the hearing in this matter be set for August 14, 2001. Commissioner Maitland seconded the motion. All Commissioners except Commissioner Olson voted aye. Commissioner Olson stated his reason for voting no was that the petition was not made available to the public prior to the meeting.

Commissioner Brandvold moved to have a verbatim transcript provided, Chairman Maggiore serve as the hearing officer and that the Commission sit as a whole body for this hearing. Commissioner Maitland seconded the motion. The motion passed unanimously.

The order of these items was amended during the approval of the agenda.

Item 8 (formerly item 10) Discussion and possible setting of hearing in WQCC 01-13 (CO) – City of Lovington.

Tannis Fox, NMED, stated that the City of Lovington and the Department are presently in negotiations. The parties in this matter have stipulated to an indefinite stay. Ms. Fox provided copies of the Motion and Order to the Commission. Commissioner Hutchinson moved for Chairman Maggiore to sign the order as the hearing officer. Commissioner Keyes seconded the motion. The motion passed unanimously.

Item 9 (formerly Item 11) Discussion and possible setting of hearing in WQCC 01-14 (CO) – Dairy Farmers of America.

Tannis Fox, NMED, stated that the Dairy Farmers of America and the Department are presently in negotiations. The parties in this matter have stipulated to an indefinite stay. Ms. Fox provided copies of the Motion and Order to the Commission. Commissioner Hutchinson moved for Chairman Maggiore to sign the order as the hearing officer. Commissioner Keyes seconded the motion. The motion passed unanimously.

Item 10 (formerly Item 8) Hearing on Petition to Amend 20.6.2 NMAC, New Mexico Water Quality Control Commission Regulations.

Commissioner Johnson is hearing officer. Commissioner Olson moved that the Commission approve the proposed language for the definitions in 20.6.2.7(d) and (o) and the public notice participation changes in 20.6.2.308 and the proposed changes to the approval process in 20.6.2.309 including the changes to section F of 3108 and section J of 3108. Commissioner Brandvold seconded the motion.

Commissioner Whipple had concerns regarding the consistency of notification procedures and what the additional costs would be to implement the proposed changes. He acknowledged the agreement that has been reached between various parties. Commissioner Whipple also asked how the Secretary views the standing of various peoples, for example, is there more weight given to comments of those who are potentially affected by a ground-water discharge as compared to the public at large?

Chairman Maggiore responded that the process used in the determination of whether or not significant public interest exists starts with the comments received by the Ground Water Quality Bureau (GWQB) pursuant to notification. The GWQB compiles the hearing requests, analyzes them and then provides a recommendation to the Secretary as to

whether, in staff's opinion; the threshold of significant public interest has been met. The Secretary stated that there is no direct relationship between volume of comment and significance.

Commissioner Bell commends the effort put forth by the Department to get agreed upon language. Commissioner Bell asked if the Department thinks that there may be a fee increase due to the proposed regulations.

Mr. Rubin stated that there is nothing in the record regarding fee increase.

Commissioner Hutchinson is unsure if this will improve public notice. Commissioner Hutchinson stated that if there are going to be proposed changes, then they should look at ways to create efficiencies that don't require increased activity and that actually accomplish the goal of getting adjacent property owners notified. It seems it would be cheaper and easier for an Environment Department employee to drive out to the site, look at the site, identify the adjacent property owners, walk up to the door, and notify them then. Commissioner Hutchinson felt that there would be a lot of loopholes and that one on one contact would be better. Commissioner Hutchinson felt this would put a burden on the regulated community.

Hearing Officer Johnson stated that the Legislature directed the GWQB of the Environment Department to take a look at the issue. The GWQB formed a group with other interested parties and came up with a consensus and this document represents this consensus.

Commissioner Whipple is concerned whether the Legislature may view the proposed amendments as a precedent for other agencies.

Chairman Maggiore stated that according to testimony, these changes would still not bring the public notice process to the threshold that the other environmental statutes have with regard to public notice. Chairman Maggiore called for a roll call vote.

Peter Maggiore	yes
John Whipple	pass
David Johnson	yes
Julie Maitland	no
Larry Bell	yes
Howard Hutchinson	no
Lynn Brandvold	yes
Bill Olson	yes
Dr. Conrad Keyes	no
Irene Lee	no
Paul Gutierrez	not present

Mr. Rubin stated that six yes votes were required to pass the motion. The votes were five yes, four no, and one pass. The petition did not pass.

Item 11 (formerly Item 9-part one) Hearing on petition to Amend Standards for Interstate and Intrastate Surface Waters, 20.6.4.7, 20.6.4.8, 20.6.4.308 and 20.6.4.309 NMAC

The petition from Mary Bernstein (WQCC-01-04) was combined with the petition from the Department (WQCC-01-06) The petition from Ms. Bernstein will be handled first and separately.

Mr. Rubin stated that there was testimony that this reach is currently used for primary contact. The petition is requesting secondary contact designation and the Clean Water Act requires that the highest use be respected.

Commissioner Hutchinson moved to approve the petition to amend Standards for Interstate and Intrastate Surface Waters (20.6.4.11 NMAC). (petition from Mary Bernstein). Commissioner Keyes seconded the motion.

Commissioner Whipple had concerns regarding San Pedro Creek being designated as a coldwater fishery as opposed to a marginal coldwater fishery, and about the temperature and depletion impacts on the stream flow in the creek that may be caused by establishment of riparian vegetation.

Hearing officer Johnson stated that sometimes individual reaches are assigned certain numeric segment-specific criteria for temperature and other parameters.

Commissioner Lee had questions regarding the use of cottonwood trees to achieve the temperature required. How would that be monitored?

Hearing Officer Johnson stated that the standards are based on the existing temperature in the stream and the testimony provided by Mr. Pierce.

Hearing Officer Johnson stated that there is not an aesthetic or vegetation standard and that this is based on water parameters. Hearing Officer Johnson also stated that there is no information on possible future problems – the cottonwood trees using too much water and the stream dries up, eliminating any fishery. Hearing Officer Johnson suggested that they use the thermograph data to make the decision.

Commissioner Whipple moved to amend the motion so as to designated San Pedro Creek as a marginal coldwater fishery. This motion failed for lack of a second.

Commissioner Keyes stated that it appears that all that is being requested is extending the reach up through San Pedro Creek.

Hearing Officer Johnson called for a roll call vote.

Peter Maggiore	yes
John Whipple	no
David Johnson	yes
Julie Maitland	yes
Larry Bell	yes
Howard Hutchinson	yes
Lynn Brandvold	yes
Bill Olson	yes
Dr. Conrad Keyes	yes
Irene Lee	yes
Paul Gutierrez	not present

The motion passed.

Chairman Maggiore requested a Statement of Reasons.

Mr. Rubin read the draft Statement of Reasons into the record.

Commissioner Hutchinson moved to accept the Statement of Reasons. Commissioner Keyes seconded the motion. The motion passed unanimously.

Item 11 (formerly Item 9-part two) Hearing on petition to Amend Standards for Interstate and Intrastate Surface Waters, 20.6.4 NMAC.

Hearing reopened.

Commissioner Keyes moved to accept the petition as amended. Commissioner Whipple seconded the motion. The motion passed unanimously.

Mr. Rubin read the draft Statement of Reasons into the record.

Commissioner Maitland moved to accept the Statement of Reasons. Commissioner Johnson seconded the motion. The motion passed unanimously.

Item 12. Other business.

Chairman Maggiore asked if the hearing set for October 9, 2001, could be set in Las Cruces.

Dr. Davis stated that it is presently set for Santa Fe. Dr. Davis stated that this is part of the triennial review and the statute requires that it be held in Santa Fe.

Chairman Maggiore stated that this does not affect the entire state, just the southern portion.

Mr. Rubin concurred. Mr. Rubin stated that this was not on the agenda for today.

Chairman Maggiore suggested that this item be placed on the agenda for July.

Ms. Voyles requested permission to offer the option to those on the WQCC mailing list to receive the agenda by e-mail rather than regular mail. Ms. Voyles had some questions regarding the mailing timeframes.

Mr. Rubin stated that this could be placed on the agenda for July.

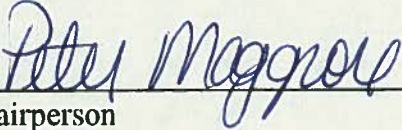
Commissioner Brandvold requested an updated copy of the Water Quality Act.

Dr. Davis stated that the Department has, in the past, provided an information book regarding these items. Dr. Davis stated that they would provide updated copies to the commissioners.

Item 13. Next meeting.

Chairman Maggiore stated that the next meeting date would be July 10, 2001, in room 326 of the State Capitol.

Commissioner Keyes moved to adjourn. Commissioner Hutchinson seconded the motion. The motion passed unanimously.



Chairperson