

**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**

**June 12, 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
Mark Fesmire	Oil Conservation Division
Cheryl Bada	State Parks Division
Larry Dominguez	Department of Agriculture
Mike Sloane	Department of Game & Fish
Howard Hutchinson	Soil and Water Conservation Commission
Steve Glass	City of Albuquerque – Municipal/County Representative
Maxine Goad	Member-at-Large
Edward Vigil	Member-at-Large

**MEMBERS ABSENT:**

Peggy Johnson	Bureau of Geology and Mineral Resources
Fred Lujan	Member-at-Large

**OTHERS PRESENT:**

Jolene McCaleb, San Juan Water Com.	Dal Moellenberg, Gallagher & Kennedy
Tannis Fox, NMED/OGC	Ken Mosley, Utility Operators Advisory Board

Terri Mosley  
Albert N. Mendez  
Margaret Ryan, NMED/CPB  
Rick Mohr  
Cindy Huntsman  
Eric Hall  
Adolfo Mendez  
Steve Hattenbach, USDA/OGC  
Neal Schaeffer, Upper Pecos Watershed  
Rachel Conn, Amigos Bravos  
Elicia Whittlesey, Forest Guardians  
Michelle Sobel, NM/LFC  
Zachary Shandler, AG's Office  
Sally Malave, AG's Office

Miguel de la Cruz  
Richard Graham  
Michelle Sobel, NM/LFC  
Bruce Frederick, NMELC  
Kit Rousch  
Mike Coffman NMED/SWQB  
Roy Jemison, USFS  
Erik Schlenker-Goodrich, WELC  
Douglas Jeffords  
Bryan Bird, Forest Guardians  
Dominique Gomez, NMED/OOTS  
Pat Shay, Rodey Law Firm  
Bill Olson, NMED/GWB  
Joyce Medina, NMED

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.

**Item 2. Approval of Agenda**

**Action: Ms. Bada moved to approve the agenda. Mr. Lewis seconded. The motion passed unanimously.**

**Item 3. Approval of April 10-11, 2007 meeting minutes**

**Action: Mr. Sloane moved to approve the meeting minutes. Mr. Dominguez seconded. The motion passed unanimously.**

**Item 4. Board approval of appointments of NM Utility Operators Certification Advisory Board members; three regular Positions; two alternates. Ken Mosley, Chair of the Advisory Board.**

Mr. Mosley introduced Cindy Huntsman, Kit Rousch and Richard Dale Graham, the proposed board appointees and the two alternates, Eric Hall and Albert Mendez. The Chair expressed the Commission's appreciation for the work done by the Advisory Board and asked that each appointee discuss their views regarding the Board's interaction with the Department, the Commission and local communities and further requested that they make suggestions, if they wished, that would improve that interaction.

**Action: Mr. Glass moved that the Commission approve the proposed appointments to the New Mexico Utility Operators Certification Advisory Board. Mr. Lewis seconded. The motion passed unanimously.**

**Item 5. Petition for regulatory change hearing in WQCC 07-04 (R)  
Proposed Amendments to 20.7.5 and 20.7.6 NMAC. Eric  
Ames, NMED/OGC.**

Leslie Barnhart, acting on behalf of Eric Ames, requested that the Commission set this matter for hearing on the September 11<sup>th</sup> meeting agenda.

There was discussion regarding the need for notice of a stakeholder meeting.

**Action: Mr. Vigil moved to set the matter for hearing on September 11, 2007. Ms. Bada seconded.**

**Mr. Vigil amended his motion to include the appointment of the Commission Chair to act as Hearing Officer in this matter. The motion, as amended, passed unanimously.**

**Item 6. Vote on Approval of Statement of Reasons in WQCC 07-02 (V),  
Lee Hill Leach Stockpile, Chino Mines petition for variance. Sally  
Malave, NM Attorney General's Office.**

Ms. Malave asked Commission members to refer to the proposed findings and conclusions which she distributed electronically on Friday, June 8. She noted that the June 8 draft differed very little from the first draft distributed June 7 and that the changes she made were not substantive and were primarily editorial.

There was Commission discussion regarding whether the procedures implemented in conducting the May 22 and 23, 2007 hearing had been appropriate. It was established that the process had been handled properly.

Ms. Goad noted that, as she previously stated during the hearing in this matter, she wished to ensure that the findings, conclusions and order contain a very strong statement regarding source control. She mentioned several changes in the text of the findings that she would like to see made.

There ensued a lengthy discussion regarding the Commission's authority to require performance by Phelps Dodge with respect to this variance taking into consideration that DP-1340, the Chino Mines Appeal, remains an unresolved issue. Ms. Malave requested and received clarification of a discharge permit and a closure permit and an applicant's ability to appeal the conditions contained in the permits.

Ms. Fox noted that the Department did not consider the Commission's proposed changes in the text of the findings, conclusions and order to be anything more than suggestions regarding source control not binding upon Phelps Dodge. Mr. Moellenberg indicated that Phelps Dodge too considered the changes to be suggestions and not binding.

There was discussion among Commission members acknowledging the source control language that had been advocated earlier should be characterized as a strong suggestion and not as binding upon Phelps Dodge.

The Chair then reiterated the text changes proposed by the Commission in the findings, conclusions and order:

Page 6, paragraph 12, removal of “*even substantial or prohibitive expense.*”

Page 7, a formatting correction at subparagraph c.

Page 10, paragraph 20, ....the Commission strongly urges NMED and Chino to “*implement*” all appropriate closure measures....

Page 11, paragraph 23, ...with the caveat that the Commission strongly urges NMED and Chino to “*implement*” all appropriate closure measures...

Page 15, subparagraph f, ...approved by NMED prior to initiation of operations. “*The Commission strongly urges that source control through regrading and covering of slopes be included in the renewal of DP 1340.*”

**Action:** Ms. Goad moved to accept the Findings of Fact, Conclusions of Law and Order Granting Variance with Conditions with the amendments noted above by the Chair. Mr. Fesmire seconded.

**Roll Call Vote:**

Ms. Padilla	yes
Mr. Lewis	abstained
Mr. Fesmire	yes
Ms. Bada	no
Mr. Glass	abstained
Mr. Dominguez	yes
Mr. Sloane	no
Mr. Hutchinson	yes
Ms. Goad	yes
Mr. Vigil	yes

The motion passed, six votes in the affirmative; two votes in the negative and two abstentions.

**Item 7. Deliberations and possible decision in WQCC 06-11 (R) Changing the Standards for Interstate and Intrastate Surface Waters (anti-degradation). Hearing Officer: Felicia Orth Time: open-ended**

The Chair noted that Mr. Shandler had distributed copies of his proposed Order and Statement of Reasons for Amendment of Standards in this matter. Mr. Shandler stated that the draft should be looked upon as a discussion starting point for the Commission’s deliberation of this case. He acknowledged his willingness to revise the document as the Commission may see fit.

Mr. Sloane initiated comment stating that he found several issues that concerned him regarding the actual regulations. His first concern relates to that of degradation proposed to last longer than twelve months, 20.6.4.8 A. (3)(b) NMAC; the second is the use of a designated management agency. He also mentioned a concern with the text of 20.6.4.8 A.(3)(a) NMAC. Ms. Goad stated that she proposed to insert a new paragraph as 20.6.4.8 A. (3)(e) NMAC, the language “Preexisting land-use activities allowed by federal or state law prior to designation as an ONRW, and controlled by best management practices (BMPs) shall be

allowed to continue so long as there are no new or increased discharges resulting from the activity after designation of the ONRW.” There was lengthy Commission discussion, in which Mr. Shandler participated, regarding the text changes proposed by Mr. Sloane and Ms. Goad as well as the impact of entering into memorandums of understanding with other entities that could at some time be held out as designated management agencies.

**Action:** Mr. Sloane moved to amend 20.6.4.8 A.(3)(a) NMAC to read “Temporary and short-term degradation of water quality shall be allowed only when such degradation can be shown to result in restoration or maintenance of the chemical, physical or biological integrity of the ONRW and is consistent with the objectives in 20.6.4.6 NMAC and with the purposes for which the Commission designated the ONRW.” Ms. Bada seconded.

**Roll Call Vote:**

Ms. Padilla	yes
Mr. Lewis	yes
Mr. Fesmire	yes
Ms. Bada	yes
Mr. Glass	abstained
Mr. Dominguez	yes
Mr. Sloane	yes
Mr. Hutchinson	yes
Ms. Goad	yes
Mr. Vigil	yes

**The motion passed, nine votes in the affirmative and one abstention.**

**Action:** Mr. Sloane moved to amend 20.6.4.8 A.(3)(b) NMAC to read “Temporary and short-term degradation of water quality shall be limited to the shortest possible time and last no longer than 12 months, unless a demonstration is made to the commission that longer term degradation is necessary to restore or maintain the chemical, physical or biological integrity of the ONRW.”

Following discussion by the Commission and Mr. Shandler, and a friendly amendment proposed by Ms. Bada, Mr. Sloane restated his motion as follows:

**Mr. Sloane moved to amend 20.6.4.8 A.(3)(b) NMAC to read “Temporary and short-term degradation of water quality that complies with 20.6.4.8 A.(3)(a) shall be limited to the shortest possible time and last no longer than 12 months, unless approved by the commission.” Ms. Bada seconded.**

**Roll Call Vote:**

Ms. Padilla	yes
Mr. Lewis	yes
Mr. Fesmire	yes
Ms. Bada	yes
Mr. Glass	abstained

<b>Mr. Dominguez</b>	<b>yes</b>
<b>Mr. Sloane</b>	<b>yes</b>
<b>Mr. Hutchinson</b>	<b>yes</b>
<b>Ms. Goad</b>	<b>yes</b>
<b>Mr. Vigil</b>	<b>yes</b>

**The motion passed nine votes in the affirmative and one abstention.**

**Action:** **Mr. Sloane moved to amend 20.6.4.8 A.(3)(c) NMAC by removing the words “designated management agency” throughout the subsection. Mr. Hutchinson seconded.**

There was a brief discussion of the proposed amendment.

**Roll Call Vote:**

<b>Ms. Padilla</b>	<b>no</b>
<b>Mr. Lewis</b>	<b>no</b>
<b>Mr. Fesmire</b>	<b>no</b>
<b>Ms. Bada</b>	<b>no</b>
<b>Mr. Glass</b>	<b>abstained</b>
<b>Mr. Dominguez</b>	<b>yes</b>
<b>Mr. Sloane</b>	<b>yes</b>
<b>Mr. Hutchinson</b>	<b>yes</b>
<b>Ms. Goad</b>	<b>no</b>
<b>Mr. Vigil</b>	<b>yes</b>

**The motion did not pass, four votes in the affirmative; five votes in the negative and one abstention.**

**Action:** **Ms. Bada moved for the adoption of NMED’s language “Preexisting land-use activities allowed by federal or state law prior to designation as an ONRW, and controlled by best management practices (BMPs), shall be allowed to continue so long as there are no new or increased discharges resulting from the activity after designation of the ONRW” as 20.6.4. A.(3)(e) 8 NMAC. Mr. Sloane seconded.**

**Roll Call Vote:**

<b>Ms. Padilla</b>	<b>yes</b>
<b>Mr. Lewis</b>	<b>yes</b>
<b>Mr. Fesmire</b>	<b>yes</b>
<b>Ms. Bada</b>	<b>yes</b>
<b>Mr. Glass</b>	<b>abstained</b>
<b>Mr. Dominguez</b>	<b>yes</b>
<b>Mr. Sloane</b>	<b>yes</b>
<b>Mr. Hutchinson</b>	<b>yes</b>
<b>Ms. Goad</b>	<b>yes</b>
<b>Mr. Vigil</b>	<b>yes</b>

**The motion passed, nine votes in the affirmative and one abstention.**

**Action:** Mr. Lewis moved that the Commission adopt the following language as the third sentence at 20.6.4.8 A.(3)(c) NMAC “All other temporary and short-term degradation shall be considered and may be approved by the Department or by a designated management agency pursuant to a Commission-approved Memorandum of Agreement between the Department and the designated management agency.” Ms. Goad seconded.

There was a brief discussion of the ramifications of Commission oversight with respect to issues relating to the contents of a memorandum of agreement.

**Roll Call Vote:**

<b>Ms. Padilla</b>	<b>yes</b>
<b>Mr. Lewis</b>	<b>yes</b>
<b>Mr. Fesmire</b>	<b>yes</b>
<b>Ms. Bada</b>	<b>yes</b>
<b>Mr. Glass</b>	<b>abstained</b>
<b>Mr. Dominguez</b>	<b>no</b>
<b>Mr. Sloane</b>	<b>yes</b>
<b>Mr. Hutchinson</b>	<b>no</b>
<b>Ms. Goad</b>	<b>yes</b>
<b>Mr. Vigil</b>	<b>yes</b>

**The motion passed, seven votes in the affirmative; two votes in the negative and one abstention.**

**Action:** Mr. Sloane moved to amend the reference in the proposed amendment to 20.6.4.8(A)(3) to refer to subparagraphs (a) through (e) instead of (a) through (d) since the Commission approved the inclusion of a new subparagraph (e). Ms. Bada seconded.

**The motion passed unanimously.**

**Action:** Ms. Bada moved the adoption of the proposed amendments to 20.4.6.7 and 20.4.6.8 NMAC as amended by the Commission. Mr. Fesmire seconded.

Commission members expressed their reasoning in voting to adopt the proposed amendments, addressing specific segments of the amendments and also noting reliance on the technical testimony presented at the hearing.

Mr. Shandler asked for affirmation from the Commission that in adopting these standards it had given appropriate weight to the facts and circumstances including the use and value of the water, water supply, propagation of fish and wildlife, recreational purposes and agricultural/industrial water purposes. Ms. Bada and Mr. Sloane stated that the Commission had given appropriate weight to the factors noted by Mr. Shandler in considering adoption of the standards.

Mr. Shandler stated that he would prepare the final Order and Statement of Reasons for Amendment of Standards based upon his earlier draft version together with the directions given to him and would not bring the document back to the Commission for an additional vote but would send it directly to the Commission Chair for signature. There was further Commission discussion requesting Mr. Shandler to add clarifying language regarding existing use issues to the Order and Statement of Reasons for Amendment of Standards.

**Roll Call Vote:**

<b>Ms. Padilla</b>	<b>yes</b>
<b>Mr. Lewis</b>	<b>yes</b>
<b>Mr. Fesmire</b>	<b>yes</b>
<b>Ms. Bada</b>	<b>yes</b>
<b>Mr. Glass</b>	<b>abstained</b>
<b>Mr. Dominguez</b>	<b>yes</b>
<b>Mr. Sloane</b>	<b>yes</b>
<b>Mr. Hutchinson</b>	<b>yes</b>
<b>Ms. Goad</b>	<b>yes</b>
<b>Mr. Vigil</b>	<b>yes</b>

**The motion passed, nine votes in the affirmative and one abstention.**

**Item 7. Other Business**

The Chair noted that notification of the two new members of the Commission had not been received.

She also reminded Commission members of the regularly scheduled meeting July 10 as well as the Tyrone remand hearing set July 23, 24, an 25, 2007 as well as August 6-10, 2007.

**Item 9. Next Regular Meeting: July 10, 2007  
Hearing in WQCC 03-12 and 03-13 (A), Tyrone remand, July 23, 24 and 25; August 6-10, 2007.**

**Item 8. Adjournment:**

**Ms. Bada moved for adjournment. Mr. Sloane seconded. The motion passed unanimously. The meeting adjourned at 12:45 p.m.**

  
\_\_\_\_\_  
Cindy Padilla, Acting Chair  
Water Quality Control Commission