



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

1190 St. Francis Drive, Room N2150

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Santa Fe, New Mexico 87502

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**Constituent Agencies**

- 7 Environment Department
- 8 Office of State Engineer
- 9 Game and Fish Department
- 10 Oil Conservation Division
- 11 Department of Agriculture
- 12 State Parks Division
- 13 Soil and Water Conservation Commission
- 14 Bureau of Geology and Mineral Resources
- 15 Municipal/County Representative
- 16 Members -at Large

**APPROVED**

**Minutes of the  
New Mexico Water Quality  
Control Commission Meeting  
July 9, 2002**

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18  
19  
20  
21  
22  
23  
24 The New Mexico Water Quality Control Commission (WQCC) meeting was held on July 9,  
25 2002, at the New Mexico State Capitol Building in Santa Fe, New Mexico.

26  
27 **MEMBERS PRESENT:**

- 28 Greg Lewis Chairman, New Mexico Environment Department
- 29 Pat Turney Office of State Engineer
- 30 Julie Maitland Department of Agriculture
- 31 Howard Hutchinson Soil and Water Conservation Commission
- 32 Bill Olson Oil Conservation Division
- 33 Steve Glass City of Albuquerque - Municipal/County Representative
- 34 Lynn Brandvold Bureau of Geology and Mineral Resources
- 35 Larry Bell Department of Game and Fish
- 36 David Johnson State Parks Division
- 37 Dr. Conrad Keyes Member-at-Large
- 38 Irene Lee Member-at-Large
- 39 Charles M. Easterling Member-at-Large

40  
41 **OTHERS PRESENT:**

- 42 Zack Schandler, WQCC Counsel John Mantis
- 43 Geraldine Madrid-Chavez, WQCC Administrator Jim Brooks
- 44 Dr. Jim Davis, SWQB David M. Vackar
- 45 Eric Ames, NMED Counsel Mike Saladen
- 46 Lynette Stevens Leo Wilson
- 47 Kit Roush Cindy Huntsman
- 48 Mundo Gutierrez John Montgomery
- 49 Glenn Saums J. Brent Moore

1 Ken Mosley  
2 Louis W. Rorc  
3 David Hogge  
4 Steve Veenis  
5 Kelly Bitner  
6 Martin Lopez

Mike Coffman  
Phil Wardwell  
Chris Mechels  
Cecilia Abeyta  
Charles Nylander

7  
8 Chairman Lewis called the meeting of the WQCC to order at 9:00 am.

9  
10 **Item #1: Roll Call**

11  
12 Geraldine Madrid-Chavez, WQCC Administrator, took roll and noted a quorum was present.

13  
14 Chairman Lewis introduced and welcomed Commissioner Charles M. Easterling.

15  
16 **Item #2: Approval of the Agenda**

17  
18 Commissioner Brandvold requested removing the approval of the April 9, 2002 minutes from the  
19 agenda and moving item #9 behind item #6 making it item #7.

20  
21 **ACTION: Commissioner Johnson made a motion to approve the agenda as amended.**  
22 **Commissioner Keyes seconded. Motion passed unanimously.**

23  
24 **Item #3: Approval of the May 14, 2002 minutes.**

25  
26 **After discussion and amendments, Commissioner Olson moved to approve the minutes as**  
27 **amended. Commissioner Keyes seconded the motion. The motion passed unanimously.**

28  
29 **Item #4: Adoption of Statement of Reasons for Amendments to Sections, 20.6.4.10,**  
30 **20.6.4.11, 20.6.4.12, 20.6.4.113 and 20.4.4.900 NMAC. (WQCC 01-18R).**

31  
32 Mr. Shandler, Counsel for the Commission, presented to the Commissioners the Order and  
33 Statement of Reasons for Amendment of Regulations with the new language. There was a  
34 significant discussion on the definition of a "grab sample".

35  
36 **ACTION: Commission Keyes moved to table the Order and Statement of Reasons for**  
37 **Amendment of Regulations until the relationship with the Water Quality**  
38 **Management Plan is resolved. Commissioner Hutchinson seconded and a**  
39 **roll call was taken. The results were as follows:**

40  
41 **Commissioner Easterling** Yes  
42 **Commissioner Keyes** Yes  
43 **Commissioner Lee** Yes  
44 **Commissioner Brandvold** Yes  
45 **Commissioner Hutchinson** Yes  
46 **Commissioner Maitland** No  
47 **Commissioner Glass** No

1                    **Commissioner Johnson**                    **Yes**  
2                    **Commissioner Olson**                    **No**  
3                    **Ms. Pat Turney**                    **Yes**  
4                    **Chairman Lewis**                    **Yes**

5  
6                    **The motion passed with an 8 – 3 vote.**

7  
8    **Item #5:        Start the 30-day public comment period for the draft 2002-2004 State of New**  
9                    **Mexico 303(d) list for waterbodies requiring total maximum daily loads**  
10                  **(TMDLs)**

11  
12    David Hogge distributed a CD and a handout to the Commissioners with an explanation for  
13    changes in the format of the 2002-2004 State of New Mexico 303(d) list. Mr. Hogge noted the  
14    following steps have been completed which improves the format of the 2002-2004 303(d) list  
15    and moves us towards the goal of integration:

- 16        • Populated *Access*® database through USEPA-developed Assessment Database (ADB)  
17        front end.
- 18        • Re-defined and delineated Assessment Units (I.E., stream reaches, river reaches, lakes, or  
19        reservoirs) based on the National Hydrologic Dataset (NHD) through the use of  
20        ArcView.
- 21        • Removed and/or re-defined several reaches based on tribal jurisdictions.
- 22        • Integrated stream reaches and lakes by 8-digit watershed codes (HUCs) in the 303(d) list.
- 23        • Linked cause(s) of impairment with impaired designated use(s) in the database.
- 24        • Generated 303(d) list from *Access*® database using Report function, organized  
25        alphabetically within HUC watershed number.

26  
27    **Item #6:        Discussion – EPA’s Draft Biological Assessment – Section 7 Consultation**

28  
29    Commissioner Hutchinson explained the issues concerning the Draft Biological Assessment and  
30    Section 7 Consultation on the standards to the full Commission.

31  
32    **ACTION:        Commission Johnson made a motion to table the discussion of the EPA’s**  
33                    **Draft Biological Assessment – Section 7 Consultation until returning from**  
34                    **executive session. Commissioner Hutchinson seconded. Motion passed**  
35                    **unanimously.**

36  
37    At this time Chairman Lewis welcomed Ms. Cindy Huntsman and Mr. Raymundo Gutierrez of  
38    the Utility Operators Certification Advisory Board to sit with the Commissioners for discussion  
39    of item #7.

40  
41    **Item #7:        (was originally Item #9)    The Utility Operators Certification Advisory**  
42                    **Board requests that the New Mexico Water Quality Control Commission**  
43                    **make appointments to fill three regular Board positions and one alternate**  
44                    **position, which are currently vacant.**

1 Dr. Jim Davis introduced Mike Coffman, Executive Secretary, NM Utility Operators  
2 Certification Advisory Board to the Commission.

3  
4 Mike Coffman requested approval from the New Mexico Water Quality Control Commission to  
5 make appointments to fill three regular Board positions and one alternate position. Mr. Coffman  
6 noted that the appointments are for the terms, which will begin July 1, 2002 and end June 30,  
7 2005.

8  
9 Mr. Coffman stated that after reviewing the candidates qualification and statements, the Board  
10 voted on June 4, 2002, to recommend the following operators to the Commission for  
11 appointment to the Board as regular members: Leo Wilson, Kit Roush, and Ken Mosley. The  
12 Board recommends appointment of Richard Nevarez to the alternate position.

13  
14 **ACTION:** **Commissioner Brandvold moved to approve Leo Wilson, Kit Roush and Ken**  
15 **Mosley as new board members and Richard Nevarez as the alternate.**  
16 **Commissioner Keyes seconded. Motion passed unanimously**

17  
18 **Item #8: (was originally Item #7) Other Business**

19  
20 Commissioner Keyes requested copies of the March 12, 2002 and the April 9, 2002 minutes.

21  
22 Dr. Jim Davis informed the Commission on the following issues:

- 23 • The Surface Water Quality Bureau (SWQB) sent a letter to EPA on May 10<sup>th</sup> seeking  
24 clarification for the timing of the initiation of the next tri-annual review of the Surface  
25 Water Quality Standards. The SWQB received 2 letters from the EPA stating they have  
26 received the letter from SWQB and will be in contact with them.
- 27 • Update on the HB 388 and the actions the Department has taken are as follows:
  - 28 ○ Engaged in a dialog with the U.S. Fish & Wildlife Service.
  - 29 ○ The SWQB met with the Office of the State Engineers, Interstate Stream  
30 Commission and with the Oil Conservation Division.
  - 31 ○ The SWQB has begun drafting a petition that will be submitted to the  
32 Commission that will recommend changes to the Surface Water Quality  
33 Standards.

34  
35 **Item #9 (was originally Item #8) Next Meeting**

36  
37 The next WQCC meeting will be in Santa Fe, NM on August 13, 2002 at 9:00 am.

38  
39 **Item #10 Executive Session pursuant to NMSA 1978, Section 10-15-1 (H)(1), Utility**  
40 **Operators Certification; Notice of Contemplated Action.**

41  
42 Zack Shandler presented to the Commission two options on how to handle the Utility Operators  
43 Certification: Notice of Contemplated Action.

1 Option #1: The Board could hear today's presentation from the Environment Department in  
2 redacted form then can make a decision on whether to issue an NCA. And would  
3 be able to sit and adjudicate the matter.  
4

5 Option #2: The Board could hear today's presentation from the Environment Department  
6 without redaction then decide whether to issue and NCA if so they would delegate  
7 adjudication responsibility to the Environment Department.  
8

9 **ACTION:** **Commissioner Lee made a motion for Option 1 with a Hearing Officer.**  
10 **Commissioner Hutchinson seconded. At this time Chairman Lewis called for**  
11 **a roll call vote. The results were as follows:**  
12

13	Mr. Gutierrez	No
14	Mr. Huntsman	No
15	Commissioner Easterling	Yes
16	Commissioner Keyes	Yes
17	Commissioner Lee	Yes
18	Commissioner Brandvold	Yes
19	Commissioner Hutchinson	Yes
20	Commissioner Bell	No
21	Commissioner Maitland	No
22	Commissioner Glass	Yes
23	Commissioner Johnson	No
24	Commissioner Olson	Yes
25	Ms. Turney	No
26	Chairman Lewis	No

27  
28 **Motion was a 7-7 tie.**  
29

30 **ACTION:** **Commissioner Hutchinson made a motion to reconsider the vote of Option 1**  
31 **under the provision of a Hearing Officer. Commissioner Easterling**  
32 **seconded. At this time Chairman Lewis called for a roll call vote. The**  
33 **results were as follows:**  
34

35	Mr. Gutierrez	No
36	Ms. Huntsman	No
37	Commissioner Easterling	No
38	Commissioner Keyes	Yes
39	Commissioner Lee	Yes
40	Commissioner Brandvold	No
41	Commissioner Hutchinson	Yes
42	Commissioner Bell	No
43	Commissioner Maitland	No
44	Commissioner Glass	No
45	Commissioner Johnson	No

1 Commissioner Olson Yes  
2 Ms. Turney No  
3 Chairman Lewis No

4  
5 Motion failed with a 4 – 10 vote.

6  
7 **ACTION:** **Commission Glass made a motion for Option #2. Commission Easterling**  
8 **seconded. At this time Chairman Lewis called for a roll call vote. The**  
9 **results were as follows:**

10  
11 Mr. Gutierrez Yes  
12 Mr. Huntsman Yes  
13 Commissioner Easterling Yes  
14 Commissioner Keyes No  
15 Commissioner Lee No  
16 Commissioner Brandvold Yes  
17 Commissioner Hutchinson No  
18 Commissioner Bell Yes  
19 Commissioner Maitland Yes  
20 Commissioner Glass Yes  
21 Commissioner Johnson Yes  
22 Commissioner Olson No  
23 Ms. Turney Yes  
24 Chairman Lewis Yes

25  
26 Motion passed with a 10 – 4 vote.

27  
28 **ACTION:** **Commissioner Glass made a motion to go into Closed Executive Session**  
29 **pursuant to NMSA 1978, Section 10-15-1 (H)(1), Utility Operators**  
30 **Certification: to consider Notice of Contemplated Action. Commissioner**  
31 **Maitland seconded and a roll call vote was taken. The results were as**  
32 **follows:**

33  
34 Mr. Gutierrez Yes  
35 Mr. Huntsman Yes  
36 Commissioner Easterling Yes  
37 Commissioner Keyes No  
38 Commissioner Lee Yes  
39 Commissioner Brandvold Yes  
40 Commissioner Hutchinson Yes  
41 Commissioner Bell Yes  
42 Commissioner Maitland Yes  
43 Commissioner Glass Yes  
44 Commissioner Johnson Yes  
45 Commissioner Olson Yes

1 Ms. Turney Yes  
2 Chairman Lewis Yes

3  
4 Motion passed with a 13 – 1 vote.

5  
6 **ACTION:** **Commissioner Keyes made a motion to come out of Closed Executive Session**  
7 **and Commissioner Bell noted nothing was discussed in Closed Executive**  
8 **Session except those items listed pursuant to the NMSA 1978, section 10-15-1**  
9 **(H)(1) and no action was taken in Closed Executive Session. Commissioner**  
10 **Johnson seconded and a roll call was taken. The results were as follows:**

11  
12 Mr. Gutierrez Yes  
13 Mr. Huntsman Yes  
14 Commissioner Easterling Yes  
15 Commissioner Keyes Yes  
16 Commissioner Lee Yes  
17 Commissioner Brandvold Yes  
18 Commissioner Hutchinson Yes  
19 Commissioner Bell Yes  
20 Commissioner Maitland Yes  
21 Commissioner Glass Yes  
22 Commissioner Johnson Yes  
23 Commissioner Olson Yes  
24 Ms. Turney Yes  
25 Chairman Lewis Yes

26  
27 Motion passed unanimously.

28  
29 **ACTION:** **Commissioner Bell made a motion to direct the New Mexico Environment**  
30 **Department to issue a Notice of Contemplated Action to Carlos S. McDaniel**  
31 **for the revocation of all his operating permits. Commissioner Brandvold**  
32 **seconded. Motion carried unanimously.**

33  
34 **ACTION:** **Commissioner Easterling made a motion to direct General Counsel of the**  
35 **Environment Department to pursue criminal action against Carlos S.**  
36 **McDaniel and David A. Garcia for fraud. Commissioner Glass and**  
37 **Commissioner Hutchinson seconded. Motion carried unanimously.**

38  
39 **Item #11** **Executive Session pursuant to NMSA 1978, Section 10-15-1 (H)(7), to discuss**  
40 **Notice of Intent to Sue for Violations of the Endangered Species Act Section**  
41 **7 – Submitted by Forest Guardians, and Notification to Commission of**  
42 **Petition to EPA by the Navajo Nation for “treatment as a state” under the**  
43 **Clean Water Act.**

44  
45 **ACTION:** **Commissioner Johnson made a motion to go into Closed Executive Session**  
46 **pursuant to NMSA 1978, Section 10-15-1 (H)(7), to discuss Notice of Intent to**  
47 **Sue for Violation of the Endangered Species Action Section 7 – Submitted by**

1 Forest Guardians, and Notification to Commission of Petition to EPA by the  
2 Navajo Nation for “treatment as a state” under the Clean Water Act.  
3 Commissioner Maitland seconded and a roll call was taken. The results were  
4 as follows:  
5

6	Commissioner Easterling	Yes
7	Commissioner Keyes	Yes
8	Commissioner Lee	Yes
9	Commissioner Brandvold	Yes
10	Commissioner Hutchinson	Yes
11	Commissioner Bell	Yes
12	Commissioner Maitland	Yes
13	Commissioner Glass	Yes
14	Commissioner Johnson	Yes
15	Commissioner Olson	Yes
16	Ms. Turney	Yes
17	Chairman Lewis	Yes

18  
19 Motion passed unanimously.

20  
21 **ACTION:** Commissioner Bell made a motion to come out of Closed Executive Session  
22 and noted the only issue discussed was pursuant to NMSA 1978, Section 10-  
23 15-1 (H)(7) and no action was taken. Commissioner Maitland seconded and  
24 a roll call was taken. The results were as follows:  
25

26	Commissioner Easterling	Yes
27	Commissioner Keyes	Yes
28	Commissioner Lee	Yes
29	Commissioner Brandvold	Yes
30	Commissioner Hutchinson	Yes
31	Commissioner Bell	Yes
32	Commissioner Maitland	Yes
33	Commissioner Glass	Yes
34	Commissioner Johnson	Yes
35	Commissioner Olson	Yes
36	Ms. Turney	Yes
37	Chairman Lewis	Yes

38  
39 Motion passed unanimously.

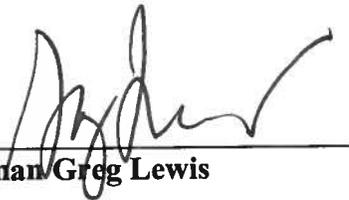
40  
41 **Item #6** Discussion – EPA’s Draft Biological Assessment – Section 7 Consultation

42  
43 Commissioner Hutchinson and Zack Shandler will draft a letter on behalf of the Commission to  
44 the EPA in regards to the Draft Biological Assessment – Section 7 Consultation of the standards.  
45  
46  
47

1 **Adjourn:**

2  
3 **ACTION: Commissioner Keyes made a motion to adjourn. Commissioner Glass**  
4 **seconded and motion carried unanimously.**  
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6  
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**Chairman Greg Lewis**