



**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION
1190 St. Francis Drive
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Santa Fe, New Mexico 87502
(505) 827-2842**

CONSTITUENT AGENCIES:

Environment Department
State Engineer & Interstate Stream Commission
Game and Fish Department
Oil Conservation Division
Department of Agriculture
State Park & Recreation Division
Soil and Water Conservation Bureau
Bureau of Mines and Mineral resources
Member-at-Large

Minutes of the
New Mexico Water Quality Control Commission Meeting
March 10, 1998

The New Mexico Water Quality Control Commission (WQCC) held its meeting on March 10, 1998 at 9:02 a.m. at the Energy, Minerals & Natural Resources Department, Oil Conservation Division Conference Room, 2040 S. Pacheco, Santa Fe, New Mexico. The following members were present.

| | |
|--------------------|-------------------------------------|
| Ed Kelley | NMED |
| Thomas C. Turney | State Engineer Office |
| Bill Olson | Oil Conservation Division |
| David Johnson | State Parks Division |
| Ricardo Chavez Rel | NM Department of Agriculture |
| Andrew Sandoval | Department of Game & Fish |
| Howard Hutchinson | Soil & Water Conservation Bureau |
| Charles Chapin | Bureau of Mines & Mineral Resources |
| Paul Gutierrez | Member-at-Large |
| Irene Juliana Lee | Member-at-Large |
| Alberto Gutierrez | Member-at-Large |

Others

| | | | |
|-----------------|--------------------------|-----------------|----------------------|
| Debra Gallegos | WQCC Adm. Secretary | Karen Breslin | WQCC Secretary |
| Tannis Fox | WQCC Legal Counsel-AGO | Maxine Goad | NMED |
| David Hogge | SWQB | Monte Anderson | NMEMNRA |
| Steve Pierce | NMED | Regina Romero | NMML |
| Marcy Leavitt | NMED | Betty Behrend | Village of Los Lunas |
| Brent Hunt | 49 CES/CEV | Gary King | NMED/SWQB |
| Dale Doremus | NMED | Mike Saladen | LANL |
| Paul Pizzoli | LACU | Erik Galloway | NMED/SWQB |
| Sterling Grogan | MRGC | Dan Santantonio | UWRCLC |
| Mike Korando | PDMC | Alex Puglisi | NMML/EQA |
| Richard Virtue | Virtue Najjarol, Bistell | Ned Kendrick | Montgomery & |
| Weldon Merritt | NMED | | Andrews |

Item 1- Roll Call.

For the record Tannis Fox is present for the WQCC meeting. (Tape I-Side I-Count-13)

Item 2- Approval of the Agenda

David Johnson moved to approve the agenda with one change: switch Item 9 to last agenda Item. H. Hutchinson seconded the motion. The motion passed unanimously. (Tape I-Side I-Count 022)

Item 3 - Review of the Proposed Minutes of October 14, 1997, and Review of the Proposed Minutes of December 9, 1997.

Bill Olson moved to approve the amended October 14, 1997 minutes. H. Hutchinson seconded the motion. The motion passed unanimously. (Tape I-Side I-Count 047)

David Johnson moved to table the December 9, 1998 minutes to review the tape recording. C. Chapin seconded the motion. The motion passed unanimously. (Tape I-Side I-Count 195)

Item 4 - Review of the proposed minutes of January 13, 1998.

Bill Olson moved to table the January 13, 1998 minutes to review tape recording. D. Johnson seconded the motion. The motion was passed unanimously. (Tape I-Side I-Count 270)

Item 5 - Request for Hearing in the Matter of Nick Van Tol/Appointment of Hearing Officer.

Tannis Fox updated the Commission on the Nick Van Tol case. A "Motion to Vacate", and Indefinitely Continue the hearing was filed on February 4, 1998, due to a potential settlement. Attorney for Nick Van Tol has filed another appeal, appealing a Compliance Order issued by the Environment Department recommending appointment of a hearing officer. (Tape I-Side I-Count 287)

Chairperson Kelley and Commissioner Irene Lee recused themselves from participating. Chairperson Kelley asked C. Chapin to stand in as acting Chairperson. (Tape I-Side I-Count 300)

David Johnson moved to appoint Weldon Merritt as hearing officer for this matter. H. Hutchinson seconded the motion. The motion passed unanimously. (Tape I-Side I-Count 321)

Bill Olson asked that in this matter the Commissioners be informed of the hearing dates. (Tape I-Side I-Count 336)

Item 6 - Update by the Surface Water Quality Bureau on the Status of the Triennial Review of the New Mexico Standards for Interstate and Intrastate Streams.

Steve Pierce, Surface Water Program Manager of the Surveillance Standards Section, updated the Commission on concerning the on-going Triennial Review. October 6, 1997, the Bureau released a public discussion draft of

proposed revisions to the NM Water Quality Standards for the upcoming Triennial Review. This draft had previously been circulated for internal review within the Bureau. Drafts have been circulated to the Commissioners and a mailing list of 205 interested individuals. The mailing list was composed of the regular WQCC mailing list, plus all entities that expressed an interest in the Triennial Review process.

Public meetings for the purposes of receiving comments on these proposals were held at three locations during the week of December 15, 1997: Las Cruces, Santa Fe, and Roswell. Individual meetings were held with several organizations by special request. On October 28, 1997, a short presentation was given before the yearly meeting of the New Mexico Soil & Water Conservation districts in Ruidoso. On November 21, 1997, a meeting with the Environmental Quality Association of the New Mexico Municipal League was held to discuss members concerns. Representatives at this meeting were from the City of Santa Fe, City of Las Cruces, City of Albuquerque, Bernalillo, and the County of Los Alamos.

First Public Information Meetings were held on:

November 18, 1997, New Mexico Mining Association, and staff from the Department of Energy, Minerals and Natural Resources.

December 10, 1997, US Forest Service Personnel, for a state wide meeting.

December 16, 1997, Corbett Center at the University of New Mexico Student Union Building. There were thirteen attendees at this meeting including Commissioner Ricardo Rel, WRRI, Tetra Tech, New Mexico Mining Association, Holloman AFB, City of Las Cruces, Bureau of Land Management, Gila National Forest, Southwest Environmental Center, Rio Grande Rio Bravo Basin & Coalition

Second Public Information Meeting was held on:

December 17, 1997, in Roswell at Eastern New Mexico University in the Oil Field Training Center. There were five attendees including Sharon Lombardi of the New Mexico Daily Association.

Third Public Information Meeting held on:

December 19, 1997, in Santa Fe at the Harold Runnels Building Auditorium. There were twenty-nine attendees at this meeting. Attendees of this meeting included representatives from the New Mexico Cattle Growers Association, Forest Guardians, Santa Clara Pueblo, Attorney General's Office, Los Alamos National Laboratory and many others.

On February 26, 1998, staff met again with representatives of the New Mexico Mining Association Environmental Quality Affairs Committee. The open and inclusive process has been a success, and there are plans to develop a second public discussion draft. This should be distributed by early spring with public meetings for interested parties if requested. (Tape I-Side I-Count 403)

Proposed revisions will be presented before the Commission to request a hearing date. There will be a 90-day hearing date notification with all comments due 45 days prior to the hearing date in order to allow sufficient review time for all parties. (Tape I-Side 2-Count 009)

Bill Olson and S. Pierce had a discussion on the Forest Guardian's interest in the anti-degradation policy, and participation in public meetings. (Tape 1-Side 2-Count 014)

Howard Hutchinson and S. Pierce had a discussion on notices requesting proposals to amendments for the Standards. (Tape I-Side 2-Count 021)

Ricardo Rel commended the SWQB for taking the hearings/meetings to various locations throughout New Mexico. He then requested that S. Pierce develop a side-by-side chart, explaining changes, with justification for making changes. This is to assist the Commission members while researching items. (Tape 1-Side 2-Count 028)

Item 7 - Update by the Surface Water Quality Bureau on the review and revision of the Continuing Planning Process (CPP) document under the federal Clean Water Act.

Maxine Goad with NMED/Surface Water Quality Bureau (SWQB) gave an update regarding the Bureau's recent and ongoing activities related to review and revision of the State's Continuing Planning Process (CPP). The New Mexico CPP was last updated in 1987. On January 13, 1998, the Bureau released a public discussion draft of proposed revisions. The draft was sent to the Federal Environmental Protection Agency (EPA), and has undergone extensive internal review within the Environment Department. Comments have been received from the EPA, the New Mexico Department of Agriculture (NMDA), New Mexico Association Conservation Districts (NMACD), and the Soil & Water Conservation Commission (SWCC). If any Commission member or the public have further comments to submit, they are welcome. The Bureau is currently working on a revised draft, taking into account comments received, including EPA's request for more details. After the new improved draft is ready the Bureau will bring it before the Commission and request a public hearing be held. (Tape 1-Side 2-Count 058)

Howard Hutchinson and P. Gutierrez asked about comments received, and in particular asked whether the comments from EPA were substantial. M. Goad replied that EPA had requested more detail, especially on the Anti-degradation Policy. B. Olson requested that the Commission be given the opportunity to review and comment on any substantial changes to the draft CPP before it was in final form to go to public hearing. He said he didn't want to review the entire new draft with all minor changes, just those sections such as anti-degradation where there may be substantial changes. Several other Commissioners concurred with Olson's request. M. Goad agreed that the SWQB could send those sections which were substantially changed to the Commissioners for such preliminary review. All agreed that the turnaround time for this review should be short. (Tape I-Side 2-Count 125)

Item 8 - Consideration and possible action on the narrative portion of the 1996 305(b) report entitled "Water Quality and Water Pollution in New Mexico." This document is available for inspection by the public at the Surface Water Quality Bureau, Environment Department, 1190 St. Francis Drive, Santa Fe, NM. Update by the Surface Water Quality Bureau on the format and content of future 305(b) reports.

Erik Galloway, Program Manager/Evaluation and Planning Section with the Surface Water Quality Bureau, along with Gary King Chief Editor, staff member, with 305(b) requested comments for consideration and adoption of the 305(b) review report. Due to the size of the document and reading required to make considerations on the 305 (b) report, "Water Quality and Water Pollution in New Mexico", it was found to be in the best interest for both the SWQB and Commission members to postpone the review until the next meeting on April 14, 1998. This will allow Commissioners to review and consider changes. (Tape I-Side 2-Count 195)

Charles Chapin made a motion to table the consideration and possible action on the narrative portion of the 1996

305(b) report entitled "Water Quality and Water Pollution in New Mexico" until the next meeting. P. Gutierrez seconded the motion. Motion passed with D. Johnson and H. Hutchinson opposed. (Tape 1-Side 2-Count 220)

Erik Galloway updated the Commission on the SWQB's proposed new format and content for future 305(b) reports. He mentioned the new format changes EPA is recommending for the next series of reports and that EPA acknowledged they will be providing only limited funds to the state for development and production of 305 (b) reports. E. Galloway asked the Commissioners for direction as to which format would be preferred for the 1998 report.

Erik Galloway supplied the Commission member's with the page of guide lines: "Preferred Table", "Least Preferred Table" and "Least of All Preferred Table" formats. EPA is requesting information be submitted by electronic format, which will include the updated tables and changes in the narrative portion of the 305(b). The tables were adopted by this Commission in April 1997.

- Preferred Table Format: EPA is requiring electronic reporting on a yearly basis. (E. Galloway noted that by Federal Law this report is required by Congress to be reported on a two year basis.)
- Least Preferred Table Format: Requests all changes to the tables and narrative changes be reported electronically on a two year basis in an electronic format.
- Least of All Preferred Table Format: Full report as the Commission has done in the past.

Erik Galloway asked the Commission for it's direction in this matter. He expressed his recommendation, which is to present the 305(b) electronic format with any narrative changes every two years. (Tape I-Side 2-Count 282)

Howard Hutchinson and E. Galloway had a discussion regarding the concerns for public access to the electronic reporting. E. Galloway suggested placing the report on the Internet, or interested person(s) may call E. Galloway and he will supply a hard copy upon request. (Tape 1-Side 2-Count 339)

Alberto Gutierrez and E. Galloway had a discussion on the added effort to put out the electronic report on an annual basis. E. Galloway explained that changes are not frequent on a yearly basis, and it is preferable to submit the report on a two year basis. (Tape I-Side 2-Count 372)

Paul Gutierrez and E. Galloway discussed supplying copies for requesting parties that do not have access to the Internet. (Tape 1-Side 2-Count 389)

Erik Galloway expressed that the report is mostly used by college and high school students throughout the state for utilization in reports and essays.

TAPE 2 SIDE 1 -COUNT 000

Bill Olson and E. Galloway discussed changes on the 305(b) report, the discussion included mention of having to employ a full-time person specifically to work on the 305(b) for production of the report.(Tape 2-Side 1-Count 012)

Howard Hutchinson and E. Galloway discussed the communications between EPA, Congress and the Commission regarding requests presented for this process. (Tape 2-Side 1-Count 067)

Andrew Sandoval mentioned that in his twelve year tenure with the Commission, the issue of the Congressional unfunded mandate had been a concern in the first 305(b) report in 1986. (Tape 2-Side 1-Count 080)

Erik Galloway suggested that a paragraph could be written that states the Commission's concerns about the unfunded mandate 305(b). This would be included in the section for comments at the beginning of the report. (Tape 2-Side 1-Count 094)

Bill Olson suggested that the best place to put such a paragraph would be to attach it to the recommendations that already go to Congress as part of the 305(b). (Tape 2-Side 1-Count 098)

David Johnson expressed his opinion regarding this matter based on past experience, and mentioned that EPA has never listened to concerns about unfunded federal mandates. D. Johnson suggested writing a separate letter to the Regional Office, signed by the Division Director and the Chairman of the Commission. (Tape 2-Side 1-Count 106)

Howard Hutchinson made a motion to extract the 305(b) report comments to Congress, and to send them to EPA and our Congressional Delegations in a separate letter. R. Rel seconded the motion. The motion passed unanimously. (Tape 2-Side 1-Count 123)

James Davis, Bureau Chief, Surface Water Quality Bureau, and H. Hutchinson had a discussion regarding the possible April 1, 1998, meeting with EPA for further discussion regarding various sub-components of the initiative known as the Clean Water Action Plan. (Tape 2-Side 1-Count 235)

Howard Hutchinson and E. Galloway had a discussion regarding funding for states to do TMDLs, 303(d) lists and how funding is directed and prioritized towards specific watersheds and not the whole state. A Memorandum of Understanding was developed between the EPA and Surface Water which allows, through the TMDLs process, NMED to work with EPA on funding. (Tape 2-Side 1-Count 317)

Chairperson Kelley and E. Galloway had a discussion on the new process regarding the time frame and whether or not the report would be shorter and easier to understand for the public. E. Galloway explained that the process would be significantly shortened. The major burden would be the accumulation of data on the programs. A shortened report would only address the changes that have happened since the past reports cycle. (Tape 2-Side 1-Count 370)

TAPE 2 SIDE 2 - COUNT 000

Bill Olson moved that all 305(b) reports be prepared in even years, with the electronic report being accompanied by an abbreviated narrative report. D. Johnson seconded the motion. The motion passed unanimously. (Tape 2-Side 2-Count 007)

Paul Gutierrez apologized to E. Galloway regarding delay on preparation for the consideration and possible action on the narrative portion to the 1996 305(b) report entitled "Water Quality and Water Pollution in New Mexico". (Tape 2-Side 2-Count 057)

Charles Chapin suggested in future meetings placing a flip note, or highlighted attachment to the agenda to inform the Commissioners of the importance of an item, and point out discussion that may need a vote in the upcoming meeting. (Tape 2-Side 2-Count 063)

Item 9 - Presentation by the Surface Water Quality Bureau of the Water Body Assessment Protocol and the Draft 1998-2000 303(d) List.

David Hogge with Surface Water Quality Bureau, Evaluation & Planning Section, gave a copy of the Draft 1998-2000 303(d) List to the Commissioners. D. Hogge gave a presentation and an explanation of TMDLs and how they are formulated. At the next scheduled meeting for the WQCC on April 14, 1998, SWQB will be requesting the Commission to formally adopt the 1998-2000 303(d) List. March 10, 1998, started the 30-day comment period for the Draft 1998-2000 303(d) List. D. Hogge informed the Commission of, and acknowledged the efforts that went into the assessment of over 200 water bodies in the last three months. (Tape 2-Side 2-Count 195)

Paul Gutierrez, and D. Hogge had a discussion concerning page 3 of the Memorandum, of understanding between NMED and EPA referring to the Consent Decree Schedule, concerning the number of TMDLs to be promulgated \approx 252. P. Gutierrez questioned if there would be increased exposure to new lawsuits and how that will be addressed in this process. D. Hogge explained that the Consent Decree Schedule and the MOU between EPA and NMED recognizes that the total number of TMDLs required may decrease as current assessments are made. (Tape 2-Side 2-Count 260)

James Davis informed the Commission that the Draft 1998-2000 303(d) List is due April 1, 1998 and will not meet that deadline. At the April 14, 1998 meeting the SWQB will be seeking formal adoption of the 1998-2000 303(d) List from the Commission. (Tape 2-Side 2-Count 293)

Chairman Kelley asked the Commission to review the Draft 303(d) List and to submit their comments to the SWQB and be prepared for the April 14, 1998, meeting. (Tape 2-Side 3-Count 300)

Chairman Kelley called for a 10-minute break: 11:05 a.m.

Meeting resumed at: 11: 17 a.m.

Item 10 - Other Business

Paul Gutierrez suggested training on the 305(b), 303(d) for new Commission members. J. Davis stated he would be happy to provide training and suggested locations be in Santa Fe and Albuquerque. (Tape 2-Side 2-Count 340)

David Johnson suggested compiling an informational binder consisting of "The Clean Water Act", "Standards", "Policy & Procedures", and " State Regulations". The binders would be updated in accordance with changes. (Tape 2-Side 2-Count 355)

TAPE 3-SIDE 1-COUNT 000

James Davis asked the Commission to allow the SWQB three weeks to prepare such document binders and be given the opportunity to schedule training. J. Davis and T. Fox will communicate for future dates on training and keep the Commission informed. (Tape 3-Side 1-Count 002)

Paul Gutierrez, New Mexico Farm & Livestock Bureau, mentioned the Non-Point Source Pollution Program remains voluntary, and began a dialogue between the Department and Livestock's users to keep the program voluntary. (Tape 3-Side 1-Count 017)

Chairman Kelley questioned T. Fox as to what guidelines there are to tour the state in joint meetings with the Soil & Water Conservation and other Commissions, and Livestock Ranchers. T. Fox mentioned joint meetings can concurred as long as publication of notices to public meetings and statutory authority is followed.

(Tape 3-Side 1-Count 024)

Paul Gutierrez moved to conduct a training seminar and wait until the Environment Department can get the binders together and communicate back to the Commission with a date for training. C. Chapin seconded the motion. The motion passed unanimously. (Tape 3-Side 1-Count 065)

Chairperson Kelley suggested to H. Hutchinson to communicate with the Soil & Water Conservation to discuss joint meetings and prioritize issues, and to bring feedback to the Commission for the next meeting on April 14, 1998. (Tape 3-Side 1-Count 090)

Item 11 - Next Meeting

Alberto Gutierrez informed the Commission of his planned absence in April and will submit any comments for the next scheduled meeting. (Tape 3-Side 1-Count 105)

Next scheduled meeting will be April 14, 1998, Tuesday.

Erik Galloway would like to extend the opportunity to view the 305 (b) comments to the general public. Copies are available in E. Galloway's office if interested parties wish to review it. (Tape 3-Side 1-Count 117)

Item 12 - Executive Session Anti-degradation Policy Lawsuit.

Charles Chapin moved to proceed into Executive Session. D. Johnson seconded the motion.

A roll call vote was taken to proceed into Executive Session:

| | |
|-------------------|-----|
| Charles Chapin | YES |
| David Johnson | YES |
| Howard Hutchinson | YES |
| Andrew Sandoval | YES |
| Bill Olson | YES |
| Thomas Turney | YES |
| Ed Kelley | YES |
| Irene Lee | YES |
| Paul Gutierrez | YES |
| Ricardo Rel | YES |
| Alberto Gutierrez | YES |

Motion passed unanimously. (Tape 3-Side 1-Count 131)

The Commission discussed only issues dealing with the anti-degradation lawsuit with EPA and the Commission's potential role. Chairperson Kelley entertained a motion for adjournment. (Tape 3-Side 1-Count 136)

Charles Chapin moved to adjourn Executive Session. R. Rel seconded the motion. The motion passed unanimously. (Tape 3-Side 1-Count 138)

Meeting adjourned at 12:05 p.m.



Chairperson