



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

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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

Approved: June 8, 2004

**Minutes of the
New Mexico Water Quality
Control Commission Meeting
April 13 & 14, 2004**

The New Mexico Water Quality Control Commission (WQCC) meeting was held on April 13 & 14, 2004, at the New Mexico State Capitol.

MEMBERS PRESENT: April 13 & 14, 2004

Ron Curry	Chair, New Mexico Environment Department
Cheryl Bada	State Parks Division
Mike Sloane	Department of Game & Fish
Steve Glass	City of Albuquerque – Municipal/County Representative
Maxine Goad	Member-at-Large
Edward Vigil	Member-at-Large
Howard Hutchinson	Soil and Water Conservation Commission
Greg Lewis	for Doug Murray, Office of State Engineer
Lynn Brandvold	Bureau of Geology and Mineral Resources
Bill Olson	Oil Conservation Division
Fred Lujan	Member-at-Large

MEMBERS ABSENT: April 13 & 14, 2004

Julie Maitland	Department of Agriculture
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OTHERS PRESENT:

Zack Schandler, WQCC Counsel	Geraldine Madrid-Chavez
Charlie de Saillen	Tannis Fox
Jim Norton	Roderick Ventura
Dal Moellenberg	John Kelly
Lynette Guevara	Stuart Butzier
Maura Hanning	Marcy Leavitt
Steve Hau	Paul Halajian

Mr. Ron Curry, Chair, called the meeting of the WQCC to order at 9:05a.m.

Item #1 Roll Call

Geraldine Madrid-Chavez took roll and noted a quorum was present.

Item #2 Approval of the Agenda

ACTION: Commissioner Hutchinson moved to approve the agenda as presented. Commissioner Brandvold seconded. Motion carried unanimously.

At this point Mr. Jim Norton sat in as Acting Chair.

Item #3 Opening of a 30-day public comment for the 2004 Integrated CWA 303(d)/305(b) List of Assessed Surface Waters, presented by NMED's SWQB.

Ms. Lynette Guevara announced the opening of the 30-day public comment period for the 2004 Integrated CWA 303(d)/305(b) list of assessed surface waters.

Ms. Guevara requested that all Commissioner comments be in writing either by e-mail or regular mail. The 30 day comment period will end May 13, 2004 and the Bureau will be seeking approval from the Commission at the regularly scheduled WQCC meeting in June.

Item #4 Opening of a 30-day public comment period for the draft Lower Rio Chama Watershed TMDLs and the revised Jemez River turbidity TMDL, presented by NMED's SWQB.

Ms. Lynette Guevara announced the opening of the 30-day public comment period for the draft Lower Rio Chama Watershed TMDLs and the revised Jemez River turbidity TMDL.

Ms. Guevara informed the Commissioner that the comment period will end May 13, 2004. A public meeting in regards to the Lower Rio Chama Watershed TMDLs is scheduled for April 29, 2004 at 6:00pm. The Bureau will be seeking approval from the Commission at the regularly scheduled WQCC meeting in June.

Item #5 Oral Argument, Deliberation and possible decision in the Matter of the Appeal of DP 1341 – Phelps Dodge Tyrone (WQCC 03-12A & WQCC 03-13A)

The Commissioner considered two motions presented by Phelps Dodge Tyrone.

ACTION: Commissioner Olson moved to deny Phelps Dodge Tyrone's Motion to continue the hearing until Commissioner Derrith Watchman-Moore can return as Chair. Commissioner Bada seconded. A roll call vote was taken and the results are as follows:

Commissioner Lujan	Yes
Commissioner Vigil	Yes
Commissioner Goad	Yes
Commissioner Brandvold	No
Commissioner Hutchinson	No
Commissioner Sloane	Yes
Commissioner Glass	Yes
Commissioner Bada	Yes
Commissioner Olson	Yes
Commissioner Lewis	Yes
Commissioner Norton	Yes

Motion carried with a vote of 9-2.

ACTION: Commissioner Hutchinson moved to deny Phelps Dodge Tyrone’s Motion to recuse Commissioner Lewis in the Matter of the Appeal of DP-1341. Commissioner Bada seconded. Motion carried unanimously.

Closing Oral Arguments were presented by Phelps Dodge Tyrone, CGEP, ED, and GRIP. At this time deliberations of the Commission began and the following actions were taken:

ACTION: Commissioner Olson moved the Environment Department’s permit conditions beyond those found under 74-6-5.I are allowed under a broad reading of the statute and regulations. Commissioner Sloane seconded.

Commissioner Olson withdrew his motion. Commissioner Sloane withdrew his second to Commissioner Olson’s motion.

ACTION: Commissioner Bada moved the constituent agencies have authority to issue permits subject to conditions pursuant to 74-6-5 paragraphs “M” and “D” and this authority is separate and independent from those conditions in paragraph “I.” Commissioner Sloane seconded. A roll call vote was taken and the results are as follows:

Commissioner Lujan	Yes
Commissioner Vigil	Yes
Commissioner Goad	Yes
Commissioner Brandvold	Yes
Commissioner Hutchinson	No
Commissioner Sloane	Yes
Commissioner Glass	Abstain
Commissioner Bada	Yes
Commissioner Olson	Yes
Commissioner Lewis	Yes
Commissioner Norton	Yes

Motion carried with a vote of 9-1-1.

ACTION: **Commissioner Olson moved based upon the information presented at the hearing there is a present and reasonable foreseeable future use of Ground Water at the Tyrone Mine facility. Commissioner Sloane seconded. A roll call vote was taken and the results are as follows:**

Commissioner Lujan	Yes
Commissioner Vigil	Yes
Commissioner Goad	Yes
Commissioner Brandvold	No
Commissioner Hutchinson	Pass
Commissioner Sloane	Yes
Commissioner Glass	Yes
Commissioner Bada	Yes
Commissioner Olson	Yes
Commissioner Lewis	Yes
Commissioner Norton	Yes
Back to Commissioner Hutchinson	Yes

Motion carried with a vote of 10-1.

The WQCC Meeting and Hearing adjourned at 5:58pm. The WQCC will reconvene at 9:00 am on 4-14-04.

Continuation of: WQCC Meeting 4-14-04

Geraldine Madrid-Chavez took roll and noted a quorum was present.

Deliberation of the Commissioner continued and the following actions were taken:

ACTION: **Commissioner Sloane moved all groundwater of the State of less than 10,000 TDS is water of foreseeable future use unless proved otherwise by the applicant. Commissioner Olson seconded. Motion carried unanimously.**

ACTION: **Commissioner Hutchinson moved the exemption or the limitation under 74-6-12.C does not apply to the Tyrone mine site. Commissioner Bada seconded. Motion carried unanimously.**

ACTION: **Commissioner Glass moved conditions 4, 6 & 17 in permit 1341 remain as written by the Environment Department subject to revision based on the outcomes of the studies specified in conditions 75 thru 89 of the permit. Commissioner Sloane seconded. Motion carries unanimously.**

ACTION: Commissioner Brandvold moved that groundwater discharge permits and abatement plans under the Water Quality Act and Commission regulations, must prevent contamination of surface water. Commissioner Bada seconded. Commissioner Olson offered a friendly amendment to reference the provisions in regulation 20.6.2.3109.H (2) and in the statute 74-6-5.E (3). Commissioner Brandvold accepted the amendment. After further discussion Commissioner Brandvold withdrew her original motion and Commissioner Bada withdrew her second.

ACTION: Commissioner Olson moved that groundwater discharge permits under the Water Quality Act, pursuant to 74-6-5.E.(3) and under the Water Quality Control Commission regulation 20.2.6.3109.H.(2) must not cause or contribute to any violation of surface water standards. Commissioner Bada seconded. Commissioner Norton offered a friendly amendment to include the reference to the regulations 20.2.3.3109.C. Both Commissioner Olson and Commissioner Bada accepted the amendment. Motion carried unanimously.

ACTION: Commissioner Glass moved that Conditions 15, 25, 26, 30, 32 and 34 be allowed to remain as written, pending future modifications based on the results of studies required by the permit. Commissioner Hutchinson seconded. Motion carried unanimously.

ACTION: Commissioner Glass moved that the Commission accept Condition 22 of discharge permit 1341 with the following change to sentence four, “Tyrone shall ensure that water remaining in any open pit, that is not part of an active waste collection and treatment system, meets applicable surface water quality standards pursuant to the State of New Mexico standards for interstate and intrastate streams.” Commissioner Olson seconded.

Commissioner Norton offered a friendly amendment, “that is not part of an active waste collection and treatment system,” and adding “sump or impoundment. After further discussion of the Commission. Commissioner Norton withdrew his friendly amendment and called for the question. Motion carried unanimously.

Item #6 Approval of the January 13 & 14, 2004 & March 9, 2004 Meeting Minutes.

ACTION: Commissioner Olson moved to accept the January 13 & 14, 2004 meeting minutes as amended. Commissioner Goad seconded. Motion carried with one abstention by Commissioner Lujan.

ACTION: Commissioner Glass moved to accept the March 9, 2004 meeting minutes as amended. Commissioner Hutchinson seconded. Motion carried with one abstention by Commissioner Lujan.

Item #7 Other Business

Commissioner Goad informed the Commission that she had received questions in regards to fish poisoning. Commission Counsel informed the Commission that he also received the same call and as soon as he gets all the facts he will respond.

Item #8 Next Meeting

The next meeting of the Water Quality Control Commission is scheduled for May 11 & 12, 2004.