

**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
Department of Health
State Parks Division
-Soil and Water Conservation Commission
Bureau of Geology and Mineral Resources
Municipal/County Representative
Members-at Large

**Minutes of the
New Mexico Water Quality Control Commission
Regular Meeting**

May 10, 2011

9:00 a.m.

New Mexico State Capitol Building Room 307

490 Old Santa Fe Trail

Santa Fe New Mexico 87501

MEMBERS PRESENT:

Butch Tongate	Acting Chair, Environment Department
Dave Gatterman	State Parks Division
Larry Dominguez	Department of Agriculture
Mike Sloane	Department of Game & Fish
Doug Bland	Bureau of Geology and Mineral Resources
Clark Taylor	Soil and Water Conservation Commission
D.L. Sanders	Office of the State Engineer (arrived at 10 a.m.)
Heidi Krapfl	Department of Health
Edward J. Hansen	Oil Conservation Division
Steve Glass	County of Bernalillo, Municipal/County Representative
Edward Vigil	Member-at-Large

MEMBER ABSENT:

Harold Tso	Member-at-Large
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OTHERS PRESENT:

Please see attached sign-in sheets

Felicia Orth, NMED/OOTS
Laurie Leibowitz, NMED/OOGC
Melanie Carver, NM Attorney General's Office

The meeting was called to order by Mr. Tongate at 9:00 a.m.

Item 1. Roll Call.

Roll was taken, it was noted that a quorum was present.

Action: Chair Tongate recognized former Commissioner Maxine Goad, who stated that it had been an honor and a privilege to serve on the Water Quality Control Commission, and offered her thanks. Commissioner Glass acknowledged the service that former Commissioner Goad had offered the Commission over her tenure, noting that she brought a wealth of historical knowledge, an amazing grasp of the issues, and that she'll be sorely missed. He offered the Commission's thanks.

Item 2. Approval of Agenda.

Action: Mr. Sloane moved Commission adoption of the Agenda. Mr. Gatterman seconded the motion. The motion passed unanimously.

Item 3. Approval of January 11, 2011 meeting minutes; approval of April 5, 2011 minutes.

Action: Mr. Glass moved adoption of the January 11, 2011 meeting minutes. Mr. Gatterman seconded the motion. The motion passed unanimously.

Action: Mr. Glass moved adoption of the April 5, 2011 meeting minutes with minor revisions. Mr. Sloane seconded the motion. The motion passed unanimously.

Item 4. Approval of consolidation and revision of the Water Quality Management Plan and Continuing Planning Process. Eric Ames, NMED/OGC, Pam Homer and James Hogan, NMED Surface Water Quality Bureau.

Action: Eric Ames, Pam Homer, and James Hogan presented NMED's request for approval of updated and consolidated Water Quality Management Plan and Continuing Planning Process to the Commission. NMED answered questions from the Commission. Mr. Tongate asked for public comment. Rachel Conn, representing Amigos Bravos, presented written and oral testimony to the Commission on the proposed hydrology protocol. NMED addressed Amigos Bravos comments and answered further questions from the Commission. Jon Klingel provided written and oral testimony to the Commission. NMED addressed Mr. Klingel's comments and answered further questions from the Commission. Mr. Sloane moved to adopt NMED's updated and consolidated Water Quality Management Plan and Continuing Planning Process as presented with minor edits. Mr. Sanders seconded the motion. The motion passed unanimously.

Item 5. Approval of Statement of Reasons in WQCC 10-10 (R), Petition for Rulemaking for Procedures Governing State Certification of Federal Permits under the Clean Water Act, NMED, Petitioner. Melanie Carver, NMAGO.

Action: Mr. Glass moved to adopt the Statement of Reasons as presented. Mr. Sloane seconded the motion. The motion passed unanimously with Mr. Bland, Mr. Taylor, and Mr. Hansen abstaining.

Item 6. Motion Hearing and Decision—Cattle Growers Association’s Motion to Stay in WQCC 10-01 (R), Designation of Outstanding National Resource Waters. Dan Dolan for Movants, Tannis Fox, NMED/OGC, Erik Schlenker-Goodrich for River Groups; Jay Tutchton and Samantha Ruscavage-Barz for WildEarth Guardians; Melanie Carver, NM Atty. General’s Office, Commission Counsel.

Action: Extensive discussion among Counsel for the parties and Commissioners related to allowable testimony, witnesses, and exhibits. The Hearing Officer, Mr. Sanders, ruled that several statements contained within the Cattle Grower’s exhibits would be allowed as statements for the purpose of public comment only and would otherwise be given no probative or evidentiary value. The Hearing Officer distributed copies of the Cattle Grower’s Docketing Statement filed with the Court of Appeals on April 18, 2011 to the Commissioners.

All witnesses were sworn in, and the Cattle Growers made their presentation in support of a stay. The hearing proceeded with discussion, objections, cross-examination, and redirect. Ms. Fox moved for the equivalent of a “directed verdict” based on the Cattle Growers’ inability to meet the threshold for proving irreparable harm, and asked the Commission to deny the stay without having to hear from all the other witnesses, who would have testified in opposition to a stay. Mr. Schlenker-Goodrich and Ms. Ruscavage-Barz concurred. Ms. Carver, Commission attorney advised the Commission of its options and the broad scope of its discretion.

Mr. Sloane moved to dismiss the Cattle Growers’ Motion to Stay based on a failure to meet the threshold of irreparable harm. Mr. Bland seconded the motion.

Roll Call Vote:

Mr. Tongate	yes
Mr. Sanders	yes
Mr. Hansen	yes
Mr. Gatterman	yes
Mr. Glass	yes
Mr. Dominguez	no
Mr. Sloane	yes
Mr. Taylor	no
Mr. Bland	yes
Ms. Krapfl	yes
Mr. Vigil	no

The motion passed, eight votes in the affirmatives; three in opposition.

[No written transcript was made of this motion hearing, but an audio-recording of the hearing in its entirety may be obtained from the Commission Administrator.]

Item 7. Other business.


Action: Commissioner Glass noted that last week the New Mexico Municipal Environmental Quality Association hosted Secretary Martin and Dr. Davis and Andy Edmondson at a meeting, and it was suggested to the Secretary that a monthly update to both the Commission and to the EIB on enforcement actions taken by the Department on behalf of the Commission or the EIB might be useful. Commissioner Glass recommended that the Commission ask the Department for a five minute summary of enforcement actions at each meeting. Chair Tongate said he thought that was a great recommendation and that he would ask the Commission Administrator to put that on the agenda.

Item 8. Next meeting:

June 14, 2011

Item 9. Adjournment.

The Chair adjourned the meeting.



Commission Chair