



**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 08/10/04

**Minutes of the
New Mexico Water Quality
Control Commission Meeting
June 8, 2004**

The New Mexico Water Quality Control Commission (WQCC) meeting was held on June 8, 2004, at the New Mexico State Capitol.

MEMBERS PRESENT: June 8, 2004

Derrith Watchman-Moore	Acting 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
Doug Murray	Office of State Engineer
Lynn Brandvold	Bureau of Geology and Mineral Resources
Bill Olson	Oil Conservation Division

MEMBERS ABSENT: June 8, 2004

Julie Maitland	Department of Agriculture
Fred Lujan	Member-at-Large

OTHERS PRESENT:

Zack Shandler, WQCC Counsel	Geraldine Madrid-Chavez
Charlie de Saillen	Tannis Fox
Jim Norton	Chuck Noble
Dal Moellenberg	John Kelly
Lynette Guevara	Stuart Butzier
Marcy Leavitt	Steve Laurer
Gary King	

Ms. Derrith Watchman-Moore, 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

The following change was made to the agenda:

- Move item #12 after Item #8 making it Item # 9 and renumber the rest of the agenda.

ACTION: **Commissioner Glass moved to approve the agenda as amended.**
Commissioner Hutchinson seconded. Motion carried unanimously.

Item #3 In the Matter of Setting for Hearing – ConocoPhillips Company State Road Facility- Compliance Order (WQCC 04-02 (CO))

Item #4 In the Matter of Setting for Hearing – ConocoPhillips Company South Broadway Facility- Compliance Order (WQCC 04-03 (CO))

Item #5 In the Matter of Setting for Hearing – Valero Energy Corp. – Compliance Order (WQCC 04-04 (CO))

Ms. Tannis Fox, Counsel for the New Mexico Environment Department, requested the Commission grant a stay in the two ConocoPhillips cases and in the Valero Energy Corp. case so the parties can try to work out a settlement. Ms. Fox noted that Counsel for ConocoPhillips has agreed to also stay discovery.

ACTION: **Commissioner Hutchinson moved to Grant a Stay for item numbers 3, 4 & 5.**
Commissioner Glass seconded. Motion carried unanimously.

Item #6 Final approval of the Lower Rio Chama TMDLs and adoption into the Water Quality Management Plan

Item #7 Final approval of revised Jemez River turbidity TMDL and adoption into the Water Quality Management Plan

Ms. Lynette Guevara, SWQB, requested the Commission give final approval of the Lower Rio Chama TMDLs (Item #6) and the revised Jemez River Turbidity TMDL (Item #7) and the adoption of both into the Water Quality Management Plan. Ms. Guevara noted the following:

- There were no public comments submitted for either the Lower Chama TMDLs or the revised Jemez River TMDL.
- Accordingly, there were not changes to the document from the versions that were released for public review and comment.

- Final draft versions were made available to WQCC and public 10 days prior to request for approval and adoption via posting on May 28th to the SWQB's website.

ACTION: **Commissioner Olson moved for Final Approval of the Lower Rio Chama TMDLs and the revised Jemez River Turbidity TMDL and adoption of both into the Water Quality Management Plan. Commissioner Hutchinson seconded. Motion carried unanimously.**

Item #8 **Final review and approval of the Integrated Clean Water Act 305 (b)/303(d) report: Water Quality and Pollution Control in New Mexico, 2004**

Ms. Lynette Guevara, SWQB, requested the Commissions final approval of the Integrated Clean Water Act 305(b)/ 303(d) report: Water Quality and Pollution Control in New Mexico, 2004.

Ms. Guevara discussed the following:

- New integrated format.
- Other changes for 2004 reporting cycle.
- Public participation process
- New integrated list categories.
- Summary of impacted waters.
- Primary focus of 2004 biennial listing cycle.
- List of commentors.
- Summary of integrated list comments.
- Other issues.

After discussion and changes the following action was taken

ACTION: **Commissioner Brandvold moved for final approval of the Integrated Clean Water Act 305(b)/ 303(d) report with the changes discussed. Commissioner Bada seconded. Motion carried unanimously.**

Item #9 **Approval of the April 13 & 14, 2004 Meeting Minutes**

After discussion and amendments the following action was taken:

ACTION: **Commissioner Goad moved to approve the April 13 & 14, 2004 meeting minutes as amended. Commissioner Olson seconded. Motion carried unanimously.**

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

Item #10 **Approval of Phelps Dodge Partial Final Decision & Order with Statement of Reasons (WQCC 03-12 & WQCC 03-13)**

The following changes were made to the Phelps Dodge Partial Final Order with Statement of Reasons:

- Page 3, #10, 2nd Line, replace the word “headings” with the word “hearings.”
- Page 3, #13, 1st Line, delete “in this matter” and insert the words, “on the appeal of supplemental discharge permit for closure (DP-1341).”
- Page 7, #23, 1st Line, insert the word “aquifer” after the word “alluvial,” and replace the word “hydraulically” with the word “hydrologically.”
- Page 7, #24, 2nd Line, insert the word “aquifer” after the word “alluvial.”
- Page 8, #27, 1st Line, delete the “s” from the word “slopes.”
- Page 10, #40, 2nd Line, insert the words “was appropriate” at the end of the sentence.
- Page 10, #41, 3rd Line, delete the word “was” and replace it with the word “of.”
- Page 11, #44, 5th Line, replace the word “precipitation” with the word “infiltration.”
- Page 11, #44, 7th Line, replace the word “precipitation” with the word “infiltration.”
- Page 11, #45, 5th Line, replace the word “precipitation” with the word “infiltration.”
- Page 11, #45, 7th Line, replace the word “precipitation” with the word “infiltration.”
- Page 12, #52, 1st Line, insert the word “the” between the words “especially and systems.”
- Page 13, #55, 1st Line, insert the words “hydrologically connected to” following the word “is.”
- Page 13, #56, 1st Line, replace the word “hydraulically” with the word “hydrologically.”
- Page 17, #21, 2nd Line, insert the words “milligrams per liter of” between “10,000 and TDS.”
- Page 18, #27, 2nd Line, replace the word “put” with the word “install.”
- Page 18, #28, 2nd Line, delete the words “on the sides of” and insert “adjacent to.”
- Page 19, #37, 2nd Line, replace the word “proposal” with the word “proposed.”
- Page 20, #44, 3rd Line, delete the word “the.”
- Page 20, #45, 2nd Line, delete the words “the overall cost;” and replace with the words “financial assurance costs, compared to Petitioner’s proposal.”

ACTION: **Commissioner Olson moved to approve the partial final decision and order affirming supplemental discharge permit 1341 and requesting a modification to condition number 22 as amended. Commissioner Sloan seconded.**

Before a vote was taken the following action took place.

ACTION: **Commissioner Vigil moved to table the vote on the Partial Final Decision and Order Affirming Supplemental Discharge Permit and Requesting a Modification to Condition Number 22 until Commission Counsel returns. Commissioner Olson seconded. Motion carried unanimously.**

ACTION: **Commissioner Vigil moved to bring back the tabled item. Commissioner Brandvold seconded. Motion carried unanimously.**

Commission Counsel returned and accepted all the changes. The results are as follows on the original motion:

ACTION: Motion carries with one “No” vote by Commissioner Hutchinson and one abstention by Commissioner Murray.

Commissioner Hutchinson explained his vote stating, that in accordance with his vote opposing the grant of authority to NMED to specify the method to be used to prevent or abate water pollution, he voted no since that is not an authority granted to the WQCC under the Act and therefore the WQCC has no authority to assign that power to a constituent agency.

Commissioner Norton announced that there has been a motion to supplement the record. Commissioner Norton stated that Commission Counsel will need some time to review the documents and then a decision will be made at a later date.

At this time Commissioner Watchman-Moore returned as Chair.

Item #11 Litigation Update. Briefing of Final Decisions:

a. Regents vs. WQCC

Mr. Zach Shandler, Commission Counsel, informed the Commission of the decision by the Court of Appeals to affirm the Commission's work of Stream Standard Amendments of May 2002 in the above case and congratulated the Commission on their victory.

b. Defenders of Wildlife v. EPA, Memorandum Opinion & Order

Ms. Tracy Hughes, NMED General Counsel, gave a history and update on the above case on the exemption for irrigation systems in the stream standards and flood control system and stated that the Court upheld the Commission Standard and the decision was filed on May 24, 2004. Ms. Hughes also noted that the time to appeal has not run out so this case is not completely over.

Announcement of Cases Filed

c. Richard's Septic v. WQCC

Mr. Zack Shandler, Commission Counsel, informed the Commission that the Counsel for Richard's Septic has filed a lawsuit in the Court of Appeals.

Announcement of Cases in Mediation

d. GRIP & NMED v. WQCC & Chino

ACTION: Commissioner Olson moved the meeting be closed under the authority of Section 10-15-1 (H) (7) to discuss litigation matters in GRIP & NMED vs. WQCC & Chino. Commissioner Sloane seconded. A roll call was taken and the results are as follows:

Commissioner Vigil	Yes
Commissioner Goad	Yes
Commissioner Brandvold	Yes

Commissioner Hutchinson	Yes
Commissioner Sloane	Yes
Commissioner Glass	Yes
Commissioner Bada	Yes
Commissioner Olson	Yes
Commissioner Murray	Yes
Commissioner Watchman-Moore	Yes

ACTION: **Commissioner Olson moved to return to open session. Commissioner Brandvold seconded. A roll call was taken and the results are as follows:**

Commissioner Vigil	Yes
Commissioner Goad	Yes
Commissioner Brandvold	Yes
Commissioner Hutchinson	Yes
Commissioner Sloane	Yes
Commissioner Glass	Yes
Commissioner Bada	Yes
Commissioner Olson	Yes
Commissioner Murray	Yes
Commissioner Watchman-Moore	Yes

Commissioner Olson announced, the matters discussed in closed session where only those matters specified in the motion.

Item #12 Deliberations and possible vote on Uranium Standards Hearing (WQCC 02-18)

After lengthy discussion and deliberation the following action was taken:

ACTION: **Commissioner Sloane moved the addition of 2,6 DNT, HMX, TNT, MTBE & Perchlorate to the list of potential toxic pollutants and the movement of 2,4 DNT under the heading of high explosives. Commissioner Olson seconded. Motion carried unanimously.**

After lengthy discussion and deliberation of merit standards proposal and effective date the following action was taken:

ACTION: **Commissioner Glass moved to adopt the Uranium Standard @ 20.6.2.3103A 12 of 30 micrograms per liter. Commissioner Sloane seconded. Motion carried unanimously.**

ACTION: **Commissioner Sloane moved for the purposes of application of the amended numeric uranium standard to past discharges resulting in a violation of the new standard, the new standard will not become effective until June 1, 2007. For any new water discharges, the standard will become effective September 1, 2004. Commissioner Hutchinson seconded. Motion carried unanimously.**

ACTION: **Commissioner Sloane amended his motion to include existing discharges as in a 3-year grace period. Commissioner Hutchinson concurred with the amendment.**

Commissioner Sloane was asked to read his motion in its entirety: **Commissioner Sloane stated: “for the purposes of application of the amended numeric uranium standard to past discharges resulting in a violation of the standard or to existing discharges in excess of the new standard, this standard should not become effective until June 1, 2007. The Standard should become effective September 1, 2004 for any new water discharges. Commissioner Hutchinson seconded. Motion carried unanimously.**

Item #13 Other Business

Commissioner Brandvold requested the New Mexico Environment Department send a letter of appreciation signed by all Commissioners to Mr. Dave Johnson for serving on the Water Quality Control Commission.

Item #14 Next Meeting

The next meeting of the Water Quality Control Commission is scheduled for July 13, 2004.

ACTION: **Commissioner Glass moved to adjourn. Commissioner Sloane seconded. Motion carried unanimously.**