

**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

**Draft Minutes
New Mexico Water Quality Control Commission
Regular Meeting
July 12, 2011
9:00 a.m.
New Mexico State Capitol Building Room 317
490 Old Santa Fe Trail
Santa Fe New Mexico 87501**

MEMBERS PRESENT:

Raj Solomon	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
Heidi Krapfl	Department of Health
Daniel Sanchez	Oil Conservation Division
Steve Glass	County of Bernalillo, Municipal/County Representative
Edward Vigil	Member-at-Large
John Waters	Member-at-Large
Hoyt Pattison	Member-at Large

MEMBER ABSENT: None

OTHERS PRESENT:

Please see attached sign-in sheets

Felicia Orth, Hearing Officer and Acting Administrator
Laurie Leibowitz, NMED/OGC
Melanie Carver, NM Attorney General's Office

The meeting was called to order by Mr. Solomon at 9:06 a.m.

Item 1. Roll Call.

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

Item 2. Approval of Agenda.

Action: Mr. Solomon noted that there was a request to move Agenda Item 6 up to Item 4. Mr. Waters moved Commission adoption of the Agenda with the noted change. Mr. Glass seconded the motion. The motion passed unanimously.

Item 3. Approve minutes of May 10, 2011 meeting.

Action: Mr. Gatterman moved adoption of the May 10, 2011 meeting minutes as presented. Mr. Sloane seconded the motion. The motion passed unanimously.

Mr. Pattison requested an updated list of Commission members.

Item 4. (formerly Item 6.) Motion Hearing and possible decision—Dairy Industry Group's Motion to Stay in WQCC 09-13 (R), Dairy Rules. Dalva Moellenberg and Anthony J. Trujillo for Movants, Misty Braswell for NMED/OGC. Jonathan Block, Bruce Frederick, Eric Jantz, Doug Meiklejohn for Coalition of water protection groups; Melanie Carver, NM Atty. General's Office, Commission Counsel.

Action: Mr. Moellenberg presented information to the Commission that all parties had reached an agreement on the dairy rules and that a settlement agreement had been filed with the commission on July 8, 2011. Mr. Moellenberg stated that the agreement resolves all issues related to the appeal of the dairy rules and allows the dairy rules to go into effect upon approval by the commission. Mr. Moellenberg stated that because of the filed stipulated agreement the parties did not believe the hearing on the motion needed to go forward and asked the Commission to stay the dairy rules pending action on the proposed changes to the dairy rules, which will be submitted to the Commission in the form of a joint petition. Following that action DIGCE has agreed to dismiss its appeal and expects the dairy rules to go into effect as soon as they can be published with the proposed amendments.

Mr. Moellenberg requested the Commission enter an order staying the dairy rules pending the actions outlined – filing of the petition with the agreed on amendments, the setting of a hearing by the Commission on those amendments, and the Commission's consideration and action on the proposed amendments. Mr. Moellenberg entertained questions from the Commission and advised the Commission that Misty Braswell and Jonathan Block were also present to answer questions from the Commission.

Commissioners discussed the issues and asked questions of the parties and their counsel related to the agreement presented. Extensive discussion related to procedural and jurisdictional issues took place as well as extensive discussion related to timeline issues with all parties.

Mr. Waters moved to grant a stay of the Dairy Rules to the date the Commission takes formal action on the proposed amended dairy rules or December 31, 2011, whichever occurs first. It is further ordered that the Commission will consider a petition for the proposed amended dairy rules from the parties at its August 2011 meeting and a formal rule hearing will be noticed as soon as possible thereafter. Mr. Sanders seconded the motion.

Extensive discussion took place related to procedural and timeline guidelines. The Commission agreed that Ms. Carver would prepare the order with input from all parties that outlines procedural guidelines and timelines related to the motion.

A roll call vote was taken and the motion passed unanimously.

Mr. Pattison asked when the Commission would receive copies of the documents. Mr. Moellenberg stated the parties would begin working on documents and the Commission would probably receive the documents in their packets for next month's meeting.

Item 5. (formerly Item 4.) Approval of final draft TMDL Rio Chama Watershed, Abiquiu Reservoir to Headwaters. Heidi Henderson, Shelly Lemon, NMED/SWQB.

Action: Ms. Henderson and Ms. Lemon presented an overview and information on the basis for the TMDL presented to the Commission for approval. Ms. Henderson, Ms. Lemon, Mr. Hogan, Mr. James Bearzi, and Dr. James Davis answered numerous questions from the Commission.

Extensive discussion took place related to the TMDL, and particularly Commission proposed language changes on Page 82 of the final draft TMDL relating to the ability of the Chama Waste Water Treatment Plant to meet the Water Quality standards for Phosphorus. Commission and NMED staff agreed on language changes on Page 82 of the final draft TMDL after further discussion. Additional discussions took place related to other TMDL issues and concerns.

Mr. Sanders moved to approve the final draft TMDL with the language changes agreed upon. Mr. Sloane seconded the motion. A roll call vote was taken and the motion passed unanimously.

Item 6. (formerly Item 5.) Set for hearing WQCC 11-03(V), a Petition for a Variance from Regulations 20.6.2.3109(C) and 20.6.2.3109(H)(3) NMAC, Tyrone Mine Savannah Pit Leach Stockpile. Richard N. Mohr for Petitioner; Charles de Saillan, NMED/OGC, Bill Olson and Mary Ann Menetrey, NMED/GWB.

Action: Mr. Moellenberg presented the basis for the hearing request for a variance from regulations for Petitioner Tyrone Mine. Mr. de Saillan and Mr. Olson presented the department's position and explained that a formal response and recommendation had not been filed yet; the deadline for filing had not yet been reached. Mr. Olson, Mr. Moellenberg, and Mr. de Saillan answered extensive questions from the Commission related to the variance and timing of the variance request.

Mr. Vigil moved to set the hearing for the October 2011 meeting and requested that Ms. Orth be appointed as the Hearing Office if she is available – in the event Ms. Orth is not available, Mr. Sanders would be appointed as the Hearing Officer. Mr. Sloane seconded the motion. The motion passed unanimously.

Item 7. Other business.

Action: Mr. Pattison requested that the Commission website be corrected and updated to reflect 13 Commission members, and requested that an updated list of Commission members be provided to all Commissioners.

Mr. Sanders requested information on Commission procedures and guidelines for ex parte communication and the appearance of impropriety. Ms. Carver stated she would provide appropriate information to all Commissioners.

Mr. Olson stated that the Commission consisted of 14 members, with one member yet to be appointed.

Mr. Dominguez stated that the report received from the Game and Fish Department was missing some pages. Mr. Sloane stated that his Department would resubmit the information to the Commission.

Mr. Dominguez stated that at the May 2011 meeting Mr. Glass recommended that NMED give a summary report related to enforcement issues be presented to the Commission on a monthly basis. Mr. Dominguez wondered why this item was not listed on the Agenda. Mr. Solomon asked if the Commission still wanted this information. Commission confirmed they would like this information, would like to see it listed as an Agenda item next month, and each month thereafter.

Item 8. Next meeting:

August 9, 2011

Item 9. Adjournment.

The Chair adjourned the meeting.



Commission Chair