

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

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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 May 9, 2006

Minutes of the

New Mexico Water Quality Control Commission Meeting

March 14, 2006

9:00 a.m.

State Capitol Room 321

Santa Fe, New Mexico

MEMBERS PRESENT:

Derrith Watchman-Moore	Acting Chair, New Mexico Environment Department
Cheryl Bada	State Parks Division
Maxine Goad	Member-at-Large
Steve Glass	City of Albuquerque – Municipal/County Representative
Edward Vigil	Member-at-Large
Howard Hutchinson	Soil and Water Conservation Commission
Wayne Price	Oil Conservation Division (for Mark Fesmire)
Peggy Johnson	Bureau of Geology and Mineral Resources
Tim Darden	Department of Agriculture
Mike Sloane	Department of Game & Fish
Fred Lujan	Member-at-Large

MEMBERS ABSENT:

Doug Murray	State Engineer's Office
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OTHERS PRESENT:

Zach Shandler, WQCC Counsel	Brent Moore, OGC/NMED
Bill Olson, NMED	Rod Ventura, NMELC
Sally Worthington, NMED	T. J. Trujillo, Gallagher & Kenney
Kathryn Becker, OGC/NMED	Dal Moellenberg, Gallagher & Kennedy
Tannis Fox, OGC/NMED	John Kelly, Modrall Law Firm
Misty Braswell, OGC/NMED	Stuart Butzier, Modrall Law Firm

Carol Parker, OFC/NMED
Mike Coffman, NMED
R. Dale Graham
Kit Roush
Leslie Barnhart, OGC/NMED
Charles de Saillan, OGC/NMED

Cindy Huntsman
Ken Mosley
Louis Rose, Montgomery & Andrews
Fernando Martinez, NMED
Marcy Leavitt, NMED

Derrith Watchman-Moore, Deputy Chair, called the meeting of the WQCC to order at 9:00 a.m.

Item #1 Roll Call:

The Commission administrator took roll and noted a quorum was present.

Item #2 Approval of Agenda

ACTION: **Commissioner Hutchinson moved to approve the agenda. Commissioner Sloane seconded. The motion passed unanimously.**

Item #3 Approval of the January 10, 2006 Meeting Minutes.

The Commissioners noted revisions to be made in the minutes.

ACTION: **Mr. Sloane moved to approve the January 10, 2006 minutes as revised. Mr. Hutchinson seconded. The motion passed unanimously.**

Item #4 Request for hearing on Amendments to 20.7.4 NMAC, Utility Operator Certification regulations, pursuant to 2005 statutory changes to NMSA 1978, 61-33-1 to 66-33-10 (House Bill 153) WQCC 06-01 (R) submitted by the Surface Water and Drinking Water Bureaus. (Brent Moore, NMED)

Mr. Moore introduced Mr. Kit Roush and Ms. Cindy Huntsman to the Commission and asked that Mr. Roush and Ms. Huntsman be seated with the Commission for this agenda matter. Commissioner Goad asked Mr. Moore to identify the “diverse group of stakeholders” referred to by NMED in its petition in this case. Mr. Moore referred Ms. Goad to Mike Coffman who stated that the stakeholders’ list included representatives from rural water associations, the Municipal League, the City of Albuquerque, the City of Bernalillo, the New Mexico Advisory Board as well as representatives from drinking and surface water associations. Mr. Hutchinson asked whether the utility operators present were satisfied with the amendments contemplated. Mr. Roush stated that the operators were in complete agreement.

ACTION: **Mr. Sloane moved that the hearing request be granted and that it be set on the Commission’s June 13, 2006 meeting agenda and further that the Chair act as hearing officer. Ms. Goad seconded the motion.**

Mr. Moore mentioned that he had discussed with Felicia Orth the possibility of her acting as the hearing officer in this matter and she had stated that she was available if needed.

The Chair asked for Commission discussion.

Mr. Sloane moved to amend his earlier motion to grant the hearing request and to appoint Ms. Orth as the hearing officer. Ms. Goad seconded the amended motion. The amended motion passed unanimously.

Item #5 Discussion and possible vote on process dealing with the Court of Appeals remand for further proceedings in WQCC 03-14 (A) and request for hearing. (Tannis Fox, NMED; Rod Ventura, GRIP; John Kelly and Dal Moellenberg, Chino Mines Company)

Mr. Ventura on behalf of Gila Resources Information Project (GRIP), requested that the Commission set a hearing on GRIP's appeal to be heard by the Commission at its September 12, 2006 meeting.

Mr. Kelly and Mr. Moellenberg, on behalf of Chino Mines, presented the Mines' position regarding the Court's Opinion and their view of how the Opinion should be interpreted.

Ms. Fox stated that in this matter, NMED joined GRIP in requesting a hearing on GRIP's appeal. She further discussed NMED's opposition to Mr. Kelly's interpretation of the language of the Opinion.

A very lengthy discussion, as well as a question and answer period, among Commission members and the referenced attorneys regarding the Court's Opinion and its remand to the Commission followed the attorneys' presentation. There was limited discussion relating to the possible impact of a Tyrone Mines case currently being considered by the Court of Appeals.

Mr. Shandler stated that he felt the discussions could be reduced in scope to four options for the Board's consideration and possible action:

1. A full debate on the merits of the Motion to Dismiss;
2. A debate as to whether Chino has the right to file or re-file the Motion to Dismiss;
3. Setting the hearing and appointing a hearing officer for pre-hearing motions, etc., and
4. A debate on whether the hearing should be under the new law or the old law.

He pointed out that if option 3 was agreed upon, the remaining options could be handled at a future meeting.

The Commission continued to discuss at length options relating to actions that could be taken by its members in an effort to comply with the Court's Opinion.

ACTION: Mr. Hutchinson moved that a hearing be set on the Commission's September, 2006 calendar in the appeal by Gila Resources Information Project and that the Commission Chair act as Hearing Officer. Commissioner Glass seconded the motion and amended it to include instruction to the parties that they develop a schedule of motions and pleadings necessary to support the hearing to be held September, 2006, by the Commission's May 9, 2006 meeting date.

Commissioners Price and Sloane abstained and voted in the negative respectively. The motion passed as amended.

Discussion by Board members as to whether or not the hearing should be conducted under the old or new rules.

Commissioner Bada moved that the hearing be conducted under the old rules because the appeal was filed before the statutory changes in 2005.

Mr. Hutchinson asked Mr. Shandler if the hearing could be held implementing the old rules. Mr. Shandler said that he did not know and asked that the parties prepare briefs on that issue. Following a short discussion by Commission members and the attorneys, the Chair requested that Ms. Bada restate her motion.

Ms. Bada moved that in the order the parties establish a scheduling order for briefing dealing with whether the pre-2005 statute and rules apply or whether the newly adopted statute and rules apply with respect to this appeal. The motion was seconded by Mr. Hutchinson. Commissioner Price abstained. The motion passed.

Ms. Bada made a second motion that the hearing could only include information up to 2003. The motion was seconded by Commissioner Darden.

A short discussion was held regarding the issue of which rules and statutes would apply in the appeal hearing.

Ms. Bada withdrew her second motion.

Discussion continued with respect to the issue of applicable statutes and rules.

Item #6 Adoption of 2006 Open Meetings Resolution.

Mr. Shandler noted that the adoption of the resolution was an annual requirement under the New Mexico Open Meetings Act.

ACTION: Mr. Hutchinson moved to adopt the 2006 Open Meetings Act Resolution. Mr. Sloane seconded the motion. The motion passed unanimously.

Item #7 Executive session to discuss settlement offer pursuant to 10-15-2-H7; WQCC and NMED v. Richard Garcia, CV 2005-1091, First Judicial District Court, Santa Fe County, New Mexico. (Kathryn Becker NMED, Zachary Shandler, WQCC)

There was discussion regarding the matter to be considered in executive session.

ACTION: Commissioner Vigil moved that the Commission go into an executive session. Commissioner Bada seconded the motion. The motion passed unanimously.

On roll-call vote:

Tim Darden:	yes	Edward Vigil:	yes
Peggy Johnson:	yes	Cheryl Bada:	yes
Mike Sloane:	yes	Howard Hutchinson:	yes
Maxine Goad:	yes	Fred Lujan:	yes
Wayne Price:	yes	Derrith Watchman-Moore:	yes
Steve Glass:	yes		

The Board reconvened in open session. Mr. Hutchinson stated that the only subject discussed by the Commission during the executive session was the proposed settlement offer in the WQCC and NMED v. Richard Garcia, CV 2005-1091, Santa Fe County District Court case.

Item #8 Other Business

There was discussion by the Board of ambiguities in the WQCC regulations relating to notice. Ms. Bada stated that those difficulties had been taken care by statute. Ms. Goad requested that Board members be given a copy of the new regulations.

ACTION: Bill Olson of the NMED Ground Water Bureau stated that he would make copies available in print and electronically to the Commission as soon as possible.

Item #9 Next Meeting

The Commission Chair noted that the next meeting would be held on April 11, 2006.

Item #10 Adjournment:

ACTION: Mr. Sloane moved for adjournment. Mr. Glass seconded the motion. The motion for adjournment passed unanimously.

Chair of the Water Quality Control Commission