

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

1190 St. Francis Drive, Room N2150

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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

**Minutes of the  
New Mexico Water Quality Control Commission Meeting  
May 9, 2006  
9:00 a.m.**

**State Capitol Room 317  
Santa Fe, New Mexico**

**MEMBERS PRESENT:**

|                   |   |
|-------------------|---|
| Cindy Padilla     | Acting Chair, New Mexico Environment Department       |
| Cheryl Bada       | State Parks Division                                  |
| Maxine Goad       | Member-at-Large                                       |
| 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                             |
| Fred Lujan        | Member-at-Large                                       |
| Greg Lewis        | Office of the State Engineer                          |
| Steve Glass       | City of Albuquerque – Municipal/County Representative |

**MEMBERS ABSENT:**

|             |                           |
|-------------|---------------------------|
| Mike Sloane | Department of Game & Fish |
|-------------|---------------------------|

**OTHERS PRESENT:**

|                             |  |
|-----------------------------|--|
| Zach Shandler, WQCC Counsel | Kathryn Becker, OGC/NMED               |
| Bill Olson, NMED            | Rod Ventura, NMELC                     |
| Ernest R. Torrez            | T. J. Trujillo, Gallagher & Kenney     |
| Michael Coleman             | Dalva Moellenberg, Gallagher & Kennedy |
| Tannis Fox, OGC/NMED        | John Kelly, Modrall Law Firm           |
| Stephanie Stringer, NMED    | Stuart Butzier, Modrall Law Firm       |

George Schuman, NMED  
Jennifer Ickes, SWQB/NMED  
Mike Bowen  
Karen Martinez

Marcy Leavitt, SWQB/NMED  
Jane DeRose Bamman  
Kelly Collins  
Elizabeth Shields

Cindy Padilla, Interim Deputy Secretary as Chair, called the meeting of the WQCC to order at 9:00 a.m. at which time she welcomed Greg Lewis from the Office of the State Engineer who has replaced Doug Murray as a member of the Commission.

**Item 1          Roll Call:**

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

**Item 2          Approval of Agenda**

**Action:          Mr. Lewis moved to approve the agenda. Mr. Hutchinson seconded. The motion passed unanimously.**

**Item 3          Approval of the March 14, 2006 meeting minutes.**

**Action:          Ms. Bada moved to approve the March 14, 2006 minutes. Mr. Lewis seconded. The motion passed unanimously.**

**Item 4          Approval of the Final Draft for the Rio Puerco Watershed (Rio Grande River to Headwaters) TMDL. (Jennifer Ickes, NMED/SWQB)**

Ms. Ickes stated that once this TMDL is approved the Bureau will have completed its work with respect to the federal Consent Decree. She also mentioned that changes in this document that vary slightly from past TMDL submissions were incorporated in order to get it approved by the EPA in an attempt to be the first state in the nation to finish Consent Decree work. She then discussed the research that had been done in the general area of Cuba, NM. Ms. Ickes noted that the requirements relating to public notice and public meetings had been met.

There were questions from the Commission regarding the scope of the final draft. Ms. Ickes stated that the current document was the first of two relating to this watershed area. A lengthy Commission discussion followed with Ms. Ickes and Mike Coleman, Geoscientist, NMED Surface Water Quality Bureau, regarding the designation of the Rio Puerco as a perennial stream.

Mr. Shandler asked Ms. Ickes what recourse was available to the public in the event there was disagreement relating to a stream being designated as perennial. Ms. Ickes stated that any interested person could present their position to the Commission during the time set aside for public comment.

Following Ms. Ickes comments, the Chair invited Mr. Ernest Torrez of La Jara, NM to discuss his concerns with the conclusions reached in the final draft. Mr. Torrez stated his position with respect to the designation of the Rio Puerco as perennial and also discussed additional areas of disagreement relating to text contained in the final draft. A lengthy discussion followed among Commission members, Ms. Ickes, Mr. Coleman and Mr. Torrez.

Mr. Shandler asked Bureau staff to explain options available to the Commission regarding any decision made by it with respect to the TMDL as presented.

The Commission, Bureau staff and Mr. Torrez resumed discussions relating to Mr. Torrez' areas of concern with the TMDL final draft.

At the Chair's request, Mr. Shandler presented the Commission with decision options available to it for action. Under option 1, the Commission would provide the Department with direction on how to proceed; option 2, the Commission approves the TMDL and it is then sent to the EPA; and, option 3, the Commission decides that a public hearing is appropriate and one is scheduled. Commission discussion regarding the decision options that were presented took place. The Chair noted that a fourth option was available to the Commission, the matter could be tabled and dealt with at a later date. Additional discussion was held relating to the scope of a public hearing and whether a request for a hearing had been received.

**Action: Mr. Hutchinson moved to table the approval of the TMDL until the Commission meeting to be held June 13, 2006. Mr. Price seconded the motion.**

**Mr. Glass proposed that the motion be amended to direct that the TMDL be revised to reflect the correct reference at Section 13 and to include a description of the historical nature of the grazing maps.**

**Mr. Hutchinson accepted that amendment. The motion passed unanimously.**

The Chair noted that a request for hearing would be due from Mr. Torrez on June 2, 2006.

**Item 5 Report on the status of the 2006-2007 State of New Mexico Integrated Clean Water Act 303(d)/305(b) Report. (Stephanie Stringer, NMED/SWQB)**

Ms. Stringer presented an update on the status of New Mexico's integrated clean water resources as well as discussing the eventual submission of the report to EPA. There was brief Commission discussion relating to EPA's review and approval schedule compliance requirements with respect to water quality standards.

**Item 6 Discussion and possible vote on proposed hearing schedule in WQCC 03-14 (A) Chino Mines remand issue. (Tannis Fox, NMED/OGC; Rod Ventura, GRIP; John Kelly, Chino Mines Company)**

On behalf of the parties to this matter, Mr. Ventura presented a proposed Stipulated Scheduling Order for review and discussion by the Commission. He pointed out that the proposed order clearly states that this appeal is limited solely to those issues that were contained in the Appeal Petition of August 22, 2003. Mr. Kelly mentioned that it was not known whether the September hearing would be limited to the record as it existed three years ago when the appeal was filed, or if the Commission would take additional evidence.

A lengthy discussion followed the parties' presentation of the proposed order.

Following Commission discussion, at Mr. Shandler's request, it was noted that Derrith Watchman-Moore had resigned her position as Deputy Secretary of NMED effective March 21, 2006, and that Cindy Padilla had been appointed by the Governor as Interim Deputy Secretary for the Department and Secretary Curry requested that she act as Chair for the WQCC. Additionally, Mr. Shandler advised Mr. Lewis, to recuse himself with respect to this particular vote. Mr. Lewis agreed to do so.

**Action: Mr. Glass moved that the proposed hearing schedule proposed by all parties be adopted. Ms. Johnson seconded the motion.**

**Mr. Hutchinson proposed a friendly amendment that would specifically grant the Chair the authority to amend the hearing schedule as might be required. Mr. Lewis recused himself from participating in the vote. The motion passed as amended.**

The Chair requested that Items 7 and 8 be reversed in order. The Commission informally agreed.

**Item 7 Other Business:**

Mr. Hutchinson requested that Mr. Shandler provide guidance as to what may occur if the Commission grants a hearing on the Rio Puerco TMDL issue.

**Item 8 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: Mr. Hutchinson moved that the Commission go into an executive session to discuss a possible settlement in this case. Mr. Price seconded the motion. The motion passed unanimously.**

**On roll-call vote:**

|                       |            |                           |            |
|-----------------------|------------|---------------------------|------------|
| <b>Tim Darden:</b>    | <b>yes</b> | <b>Edward Vigil:</b>      | <b>yes</b> |
| <b>Peggy Johnson:</b> | <b>yes</b> | <b>Cheryl Bada:</b>       | <b>yes</b> |
| <b>Maxine Goad:</b>   | <b>yes</b> | <b>Fred Lujan:</b>        | <b>yes</b> |
| <b>Wayne Price:</b>   | <b>yes</b> | <b>Cindy Padilla:</b>     | <b>yes</b> |
| <b>Steve Glass:</b>   | <b>yes</b> | <b>Howard Hutchinson:</b> | <b>yes</b> |
| <b>Greg Lewis</b>     | <b>yes</b> |                           |            |

The Commission reconvened in open session. Mr. Glass 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 pursuant to NMSA 1978, §10-15-2 (H).

**Action:** Mr. Glass moved that authority be granted to the attorneys from the Office of the General Counsel of the Environment Department to pursue the settlement of this case. Mr. Vigil seconded the motion. The motion passed unanimously.

Mr. Shandler mentioned that Ms. Goad had requested an update on the general topic of septage hauler regulations. Kathryn Becker and Bill Olson provided status reports.

**Item #9 Next Meeting**

The Chair noted that the next meeting would be held on June 13, 2006.

**Item #10 Adjournment:** The meeting adjourned at 12:10 p.m.

**Action:** Mr. Glass moved for adjournment. Mr. Darden seconded the motion. The motion for adjournment passed unanimously.

*Cindy Padilla – Signature on File*

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Chair of the Water Quality Control Commission