

**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 August 8, 2006

Minutes of the

New Mexico Water Quality Control Commission Meeting

June 13, 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
Mike Sloane	Department of Game & Fish
Carl Chavez	Oil Conservation Division (for Wayne Price)
Peggy Johnson	Bureau of Geology and Mineral Resources
Fred Lujan	Member-at-Large
Steve Glass	City of Albuquerque – Municipal/County Representative

**MEMBER ATTENDING
BY TELEPHONE**

Re: Item #4 Tim Darden, Department of Agriculture

MEMBER ABSENT: Greg Lewis, Office of the State Engineer

OTHERS PRESENT:

Zach Shandler, WQCC Counsel	Ernest Gurule
Bill Olson, NMED	Violette Valerio-Hirschfeld, NMED
Ernest R. Torrez	Chuck Thomas

Remijio Gutierrez
Ken Mosley
Lynette Guevara, NMED/SWQB
Heidi Henderson, NMED/SWQB
Jane DeRose Bamman, NMED/SWQB
Joe Ramirez
Miguel De La Cruz
Ray Leverielly
Adrian Ortiz
Kit Rousch
Joyce Medina, NMED/OOTS

Cindy Huntsman
Mike Coffman, NMED
Stuart Butzier, Modrall Law Firm
Marcy Leavitt, NMED/ SWQB
Elizabeth Shields
Dennis Fernandez
Charlie Martinez
Nicole Mangin
Cynthia Arnold
Tannis Fox, NMED/OGC

Cindy Padilla, Interim Deputy Secretary as Chair, called the meeting of the WQCC to order at 9:00 a.m. at which time she noted Mr. Lewis was absent, Mr. Chavez was attending in lieu of Mr. Price and Mr. Darden would be attending the meeting by telephone for agenda item 4 only.

Item 1. Roll Call:

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

Item 2. Approval of Agenda

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

Item 3. Approval of the May 9, 2006 meeting minutes.

Commission members noted several amendments to be made in the minutes.

Action: Mr. Glass moved to approve the May 9, 2006 minutes as amended. Mr. Lujan seconded. Mr. Sloane abstained. The motion passed.

Item 4. Determination of whether to hold a public hearing pursuant to a Request for Hearing regarding Approval of the Final Draft for the Rio Puerco Watershed (Rio Grande to Headwaters) TMDL. (Tannis Fox, NMED/OGC; Marcy Leavitt, NMED/SWQB; Ernest Torrez)

At 9:25 a.m., Mr. Darden attended the meeting by telephone in order to participate in Commission discussions relating to this agenda item.

Ms. Fox pointed out to the Commission that Mr. Torrez' petition for hearing contained a sufficient number of signatures to evidence significant public interest and therefore qualified as an issue for public hearing. Ms. Fox went on to state that the Department had developed a proposed scheduling order for the Commission to consider relating to document submission deadlines for the hearing. Ms. Fox mentioned that this situation is unique in that there are no regulations governing public hearings on TMDLs. She continued, discussing the importance of creating a fair and impartial venue for public comment as well as setting out a proposed framework for implementing portions of the Water Quality

Management Plan and 20.1.3 NMAC. She emphasized the Department's view that the process should be as efficient and streamlined as possible in order to accommodate all parties in an open and practical manner. Additionally, she pointed out the positive aspects of the Commission appointing a hearing officer at this juncture to move the procedural process forward in a timely fashion. She further noted that the hearing should be scheduled, at the latest, at the Commission's September meeting due to the time constraints relating to the submission of the TMDL under the Consent Decree. She concluded by stating that the TMDL previously presented to the Commission is being revised and specifically addresses some of Mr. Torrez' objections.

The Chair then discussed Ms. Fox's scheduling proposals with Mr. Torrez as well as explaining the Commission's authority with respect to the selection of a hearing officer, the hearing site and the opportunities available for the presentation of technical testimony as well as public comment.

A lengthy Commission discussion followed regarding revision of the TMDL, questions relating to setting a hearing, selecting a site for the hearing and possible procedures for dealing with an issue that is unprecedented for the Commission.

The Commission Chair then pointed out the options available to the members with respect to holding a hearing on the existing proposed TMDL and the Commission making a decision on that issue at which time the Department would then issue a revised TMDL based on the outcome of the hearing. The Commission would then take action on the TMDL proposal as a matter of rulemaking without it being adjudicatory. However, the Department is requesting that the Commission examine the revised TMDL at the hearing and make both decisions or recommendations at that time based on the deadlines facing the Department.

Discussion ensued regarding the availability of public comment time at the hearing, the need to appoint a hearing officer and the issue of having available at the hearing a translator who would translate for those individuals wishing to make public comment in Spanish.

Action: Mr. Sloane moved that a public hearing be held pursuant to a request for a hearing regarding Approval of the Final Draft of the Rio Puerco Watershed TMDL. Mr. Hutchinson seconded the motion. The motion carried unanimously.

The Commission Chair then opened a discussion regarding the need to appoint a hearing officer to preside over the hearing in this matter.

Action: Mr. Glass moved that Felicia Orth be designated as the hearing officer for the public hearing. Mr. Vigil seconded the motion. The motion carried unanimously.

The Commission continued discussions relating to the hearing content and procedures, its possible eventual impact and the proposed scheduling order.

Action: Mr. Vigil moved that the Commission accept NMED's proposed Scheduling Order for the public hearing. Mr. Glass seconded the motion. The motion carried unanimously.

Commission discussion continued relating to the hearing location.

Action: Ms. Bada moved that the public hearing be held in Cuba, New Mexico. Mr. Hutchinson seconded the motion. The motion carried. Mr. Vigil dissented.

Item 5. Appointment of Utility Operators Certification Advisory Board members In accordance with 20.7.4.29 NMAC.

The Commission Chair invited Ms. Cindy Huntsman and Mr. Kit Rousch to join the Commission as members for this agenda item and agenda Item 6. There was Commission discussion regarding the exceptional qualifications of the proposed advisory board members.

Action: Mr. Glass moved to accept the recommendation of the Utility Operators Certification Advisory Board for the appointment of Dennis Fernandez and Remijio Gutierrez to the Board. Ms. Goad seconded the motion. The motion carried unanimously.

Item 6. Hearing on Amendments to 20.7.4 NMAC pursuant to 2005 statutory changes to NMSA 1978, §§61-33-1, 66-33-10 (HB153), WQCC 06-01(R); Utility Operator Certification regulations. Brent Moore, NMED/OGC; Mike Coffman NMED/SWQB/FOS; Violette Valerio-Hirschfeld, DWB; Hearing Officer: Felicia Orth

The Chair announced that the hearing would commence and that Ms. Orth would preside as Hearing Office for this agenda item. Kathy Townsend Court Reporters transcribed the hearing. All Notices of Intent to Present Technical Testimony were timely filed and are available for review, as well as public comment correspondence and the hearing transcript, in the office of the WQCC Administrator, 1190 St. Francis Drive, Harold Runnels Building Room 2150, Santa Fe, New Mexico 87505.

Item 7. Other business:

The Chair thanked Ms. Huntsman and Mr. Rousch for their services and excused them from further Commission participation. She then mentioned several items relating to future Commission agenda items.

Item 8. Next meeting – July 11, 2006 in Santa Fe

Item 9. Adjournment:

Mr. Sloane moved for adjournment. Ms. Bada seconded the motion. The motion for adjournment passed unanimously. The meeting adjourned at 4:25 p.m.

Following adjournment, Mr. Shandler cautioned the Commission to remember their obligations and to not accept any ex parte communications with respect to the Utility Operator Certification regulations.

Signature on File

Chair of the Water Quality Control Commission