



**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION
1190 St. Francis Drive
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Santa Fe, New Mexico 87502
(505) 827-2425**

CONSTITUENT AGENCIES:

**Environment Department
State Engineer & Interstate Stream Commission
Game and Fish Department
Oil Conservation Division
Department of Agriculture
State Parks Division
Soil and Water Conservation Commission
Bureau of Mines and Mineral Resources
Members-at-Large**

**Minutes of the
New Mexico Water Quality
Control Commission Meeting
May 9, 2000**

The New Mexico Water Quality Control Commission (WQCC) meeting was held on May 9, 2000 at 9:00 a.m. in the Padre Martinez Room, Quality Inn, 1043 Camino del Pueblo Sur, Taos, New Mexico.

Members Present:

Greg Lewis	Acting Chair, New Mexico Environment Department
Jack Kelly	Department of Game and Fish
Bill Olson	Oil Conservation Division
Ricardo Rel	Department of Agriculture
Dave Johnson	State Parks Division
Howard Hutchinson	Soil and Water Conservation Commission
Lynn Brandvold	Bureau of Mines and Mineral Resources
Paul Gutierrez	Member-at-Large
Irene Lee	Member-at-Large

Members Absent:

Tom Turney	State Engineer & Interstate Stream Commission
Alberto Gutierrez	Member-at-Large

Others Present:

Daniel Rubin	WQCC Counsel
Tamella Lakes	WQCC Administrator
Felicia Orth	NMED Hearing Officer
James Davis	Chief/SWQB
Steven Pierce	NMED/SWQB
Ronald Smorynski	Citizen

Ron Henderson	Citizen
Jim Brooks	U.S. Fish and Wildlife Service
Chris Hoagstrom	U.S. Fish and Wildlife Service
David Propst	NMDG&F
Russ Ward	U.S. Fish and Wildlife Service
Chris Cudia	NMED/SWQB
Stephen Siegfried	SC Daily Press
Michael Hatch	NMDG&F
B. Stone	Gila Fish and Gun Club
Dutch Salmon	Citizen
Laura Browning	USFS Gila
Jerry Monzinco	USFS Gila
Steve Libby	USFS Gila
Mario Andrews	Citizen
Allen Andrews	Citizen

Chairman Lewis called the meeting to order at approximately 9:10 a.m.

Item 1: Roll Call.

Tamella L. Lakes, WQCC Administrator took roll call.

Item 2: Approval of the agenda.

Mr. Johnson moved to approve the agenda. Ms. Brandvold seconded the motion. The motion passed unanimously.

Item 3: Approval of the April 11, 2000, minutes.

Mr. Johnson moved to approve the April 11, 2000, minutes as amended. Mr. Hutchinson seconded the motion. The motion passed unanimously.

Item 4: Presentation of the Commissioner's individual comments to the public on the proposed petition for rulemaking procedures WQCC 00-03 (R).

Mr. Hutchinson and Ms. Lee submitted their written comments to the Commission and to the public.

Mr. Johnson stated that he did not submit comments because he felt that his questions and concerns regarding the petition would be addressed during the hearing process. Mr. Olson stated that he also believed that his concerns would be addressed during the hearing process.

Mr. Hutchinson moved to release the comments to the public. Ms. Brandvold seconded the motion. Mr. Olson abstained. The motion passed.

Item 5: Presentation of recommended decision by hearing officer in the matter of the petition for the deployment of piscicide pursuant to 20.6.1 NMAC, §1105.F in White Creek, deliberation on final order by the Commission, and possible oral argument.

Ms. Felicia Orth, NMED Hearing Officer, stated that a hearing was held on April 28, 2000, in Silver City, New Mexico and lasted approximately two hours and forty-five minutes. The Department of Game and Fish gave a presentation using slides and handouts.

Mr. Chris Cudia, Surface Waste Quality Bureau, gave a brief presentation, and then comments were taken from the U.S. Fish and Wildlife Service, the U.S. Forest Service and the general public. The petition is for the use of antimycin in a fairly remote part of White Creek. Antimycin would be applied using drip stations throughout the part of the river being treated. The piscicide would kill all gilled species by inhibiting respiration. After the application is complete the river would be restocked with Gila trout. The Gila trout now present in the creek are hybrids of Gila and rainbow trout. The point of the procedure is to reintroduce pure Gila trout back into the river and to eventually recommend down-listing of the Gila trout under the Endangered Species Act.

The Surface Water Bureau representative, Mr. Cudia, indicated his support for the petition but noted that the petition failed to meet three of the ten criteria required under the Stream Standards §1105.F. Mr. Cudia stated that the supplemental information submitted by the DG&F appeared to meet the three criteria that were lacking prior to the hearing, but wished to make a post hearing submittal regarding this issue and have it reviewed by the Surface Water Bureau Chief. The post hearing submittal states that with the supplemental information, the petition submitted by the DG&F does meet the requirements under §1105.F.

The DG&F plans to bury the fish next to the creek under a pile of rocks to protect wildlife from digging the fish up. The DG&F stated during the hearing that they have applied antimycin in the past with no harm coming to any wildlife other than the target fish. The antimycin breaks down rather quickly in the river; the longest life in water is eight (8) days. The application of antimycin does not pose a threat to humans.

A discussion did take place during the hearing regarding the petition on whether or not it could be considered a variance. The Environment Department (NMED) stated that it was not considered a variance because the application of toxic substances is contemplated under 20.6.1 NMAC, §1105.F.

Mr. Johnson asked the DG&F if tabling their decision until the Commission had time to review the transcript and record would adversely affect the Department's timeline for this procedure. Mr. Propst stated that the DG&F has scheduled the first application to begin the first week of June.

Mr. Johnson moved to go into closed session to review the hearing transcript, the hearing record and to deliberate. Ms. Brandvold seconded the motion.

Mr. Johnson withdrew his motion. Ms. Brandvold withdrew her second on the motion.

Mr. Johnson moved to table the agenda item until after the hearing on the petition for the deployment of piscicide pursuant to 20.6.1 NMAC, §1105.F, in Costilla Creek, South Ponil Creek and Poso Creek. Ms. Brandvold seconded the motion. The motion passed unanimously.

Item 6: Other business

Mr. Jim Davis, Chief SWQB, informed the Commission that the SWQB is hosting a conference in Angel Fire, New Mexico titled "The Fifth Annual US EPA Region Six Nonpoint Source Watershed Conference." Registration is currently 191 participants from eight states. There are several national organizations participating, but very little representation from citizens or agencies in New Mexico. Mr. Davis urged the Commissioners and their respective agencies to attend.

Mr. Brian Shields, Amigos Bravos, asked if would be appropriate to discuss the petition for adoption of the WQCC rulemaking procedures.

Mr. Rubin stated that the subject is not an agenda item and should not be discussed by the Commission. A working group has been established and open to anyone who would like to participate. The petition will be on the Commission's July agenda.

Mr. Shields stated to the Commission that there are reasons why Amigos Bravos will not participate in the work group, and feels that the public has been slighted.

Mr. Hutchinson encouraged Amigos Bravos to participate in the work group.

Item 7: Next meeting.

The next meeting of the WQCC will be held on June 13, 2000, in Santa Fe, New Mexico.

Item 8: Hearing – WQCC 00-01 – In the matter of the petition for the deployment of piscicide pursuant to 20.6.1 NMAC, §1105.F, in Costilla Creek, South Ponil Creek and Poso Creek, New Mexico Department of Game and Fish, petitioners.

The Department of Game and Fish gave a presentation to the Commission using slides and handouts, that lasted approximately two hours.

Mr. Johnson moved to close the record and adjourn the hearing. Mr. Olson seconded the motion. The motion passed unanimously.

Open session resumed at 2:36 p.m.

Mr. Johnson moved to go into closed session. The reason for going into closed session is to discuss adjudicatory matters. Mr. Hutchinson seconded the motion.

VOTE

Greg Lewis	No
Tom Turney	Absent
Bill Olson	No
Dave Johnson	Yes
Ricardo Rel	No
Jack Kelly	Abstain
Lynn Brandvold	No
Howard Hutchinson	No
Alberto Gutierrez	Absent
Paul Gutierrez	No
Irene Lee	No

The motion did not pass.

Mr. Rubin stated that the main issue is to assure that both petitions comply with 1105.F and all notice requirements.

Mr. Olson moved to approve the petition for the deployment of piscicide pursuant to 20 NMAC 6.1, §1105.F, in Costilla Creek, South Ponil Creek and Poso Creek, with the conditions listed below.

- 1) A live car be placed 100 yards downstream of the most downstream detoxification station.

- 2) Reasonable notice be given to all downstream landowners prior to the treatment.
- 3) A briefing be given to the WQCC in a reasonable amount of time after the completion of the project on pre- and post-treatment assessment monitoring and on the success of the application(s).
- 4) A follow-up briefing be given to the WQCC one year after the project has been completed.

Mr. Hutchinson seconded the motion. The motion passed unanimously.

Mr. Olson moved to direct counsel for the WQCC to draft a statement of reasons for the hearing. Ms. Brandvold seconded the motion. The motion passed unanimously.

Mr. P. Gutierrez moved to approve the petition for the deployment of piscicide pursuant to 20.6.1 NMAC, §1105.F, in White Creek, with the conditions listed below, a statement of reasons drafted by counsel for the WQCC and to include in the order a quote taken from 1105.F regarding post treatments.

- 1) A live car be placed 100 yards downstream of the most downstream detoxification station.
- 2) Reasonable notice be given to all downstream landowners prior to the treatment.
- 3) A briefing be given to the WQCC in a reasonable amount of time after the completion of the project on pre and post-treatment assessment monitoring and on the success of the application(s).
- 4) A follow-up briefing be given to the WQCC one year after the project has been completed.

Ms. Brandvold seconded the motion. The motion passed unanimously.

Mr. P. Gutierrez moved to adjourn at approximately 4:00 p.m. Mr. Olson seconded the motion. The motion passed unanimously.


Chairperson