



**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION
1190 St. Francis Drive, Suite S-2102
Santa Fe, New Mexico 87505
Phone: (505) 827-2428**

CONSTITUENT AGENCIES

Environment Department	State Engineer & Interstate Stream Commission
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	Members-at-Large

Meeting Minutes

New Mexico Water Quality Control Commission

Meeting

August 13, 2019 Continuing on August 14, 2019

9:00 a.m.

State Capitol Building, Room 307

490 Old Santa Fe Trail

Santa Fe, New Mexico 87501

MEMBERS PRESENT:

Jennifer Pruett	Chair, New Mexico Environment Department
Gabriel Wade	Vice Chair, Oil Conservation Division
Dr. Abinash Achrekar (teleconference)	Department of Health
Keith Candelaria	Member-at-Large
David Certain	State Parks Division, Energy, Minerals and Natural Resources Department
Larry Dominguez	Department of Agriculture
Howard Hutchinson	Soil and Water Conservation Commission
Krista McWilliams (teleconference 8/14/19)	Member-at-Large
Ghassan Musharrafieh	New Mexico State Engineer and Intrastate Stream Commission
Kirk Patten	New Mexico Game and Fish
Kelsey Rader	Member-at-Large
David Sypher	Municipal and County Representative
Bruce Thomson	Member-at-Large
Stacy Timmons	New Mexico Bureau of Geology and Mineral Resources

MEMBERS ABSENT:

Howard Hutchinson (8/14/19)	Soil and Water Conservation Commission
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OTHERS PRESENT:

John Grubescic
Cody Barnes
Denise Kopan (8/13/19)
Cheryl Arreguin (8/14/19)
Rebecca Roose

Shelly Lemon
Rachel Jankowitz
Heidi Henderson
John Verheul
Elizabeth Rietzel

Commission Counsel
Commission Administrator
Certified Court Reporter
Certified Court Reporter
New Mexico Environment Department (NMED)
Water Protection Division Director
NMED, Surface Water Quality Bureau Chief
NMED, Surface Water Quality Bureau
NMED, Surface Water Quality Bureau
Counsel for NMED in WQCC 18-04 (CO)
Counsel for Abel Villalpando, Petitioner for
Creekside Dairy and Rockhill Dairy in WQCC
17-07 (A) and WQCC 17-08 (A).
Counsel for NMED in WQCC 17-07 (A) and 17-08
(A)
Counsel for NMED in WQCC 19-02 (A)
Counsel for petitioners Turner Ranch
Properties, L.P., Hillsboro Pitchfork Ranch,
LLC, and Gila Resources Information Project in
WQCC 19-02 (A)
Counsel for petitioner Elephant Butte Irrigation
District in WQCC 19-02 (A)
Counsel for applicant New Mexico Copper
Corporation in WQCC 19-02 (A)
Hearing Officer in WQCC 19-02 (A)

Christopher Atencio

Andrew Knight
Charles de Saillan

Samantha Barncastle

Stuart Butzier

Richard Virtue

Please see attached sign-in-sheet for others present.

The Chair called the meeting to order at 9:01 a.m.

Item 1. Roll Call.

The Administrator called the roll; a quorum was present.

Item 2. Approval of the Draft Agenda.

Action: The Chair made a correction to the Agenda. Item 12 should be corrected to show that Charles de Saillan represents “Hillsboro Pitchfork Ranch, LLC” among his other clients. Commissioner Hutchinson moved to approve the draft agenda as amended. Commissioner Dominguez seconded the motion. The Chair called a voice vote. The motion passed unanimously.

Item 3. Approval of meeting minutes from June 11, 2019 and June 18, 2019.

Action: Commissioner Certain moved to approve the meeting minutes from June 11, 2019. Commissioner Hutchinson seconded the motion. The Chair called a voice vote.

The motion passed unanimously. Commissioner Hutchinson moved to approve the meeting minutes from the special meeting on June 18, 2019. Vice Chair Wade seconded the motion. The Chair called a voice vote. Commissioner Dominguez abstained from the voice vote because he was absent for the special meeting on June 18, 2019. The motion passed unanimously.

Item 4. Public comment.

Action: The Chair opened the floor for public comment. Mr. James Paxon spoke first about agenda item 12. Mr. Paxon submitted written comment to the Commission Administrator. Mr. Bruce Swingle spoke next about agenda item 12. No other members of the public wished to speak.

Item 5. Presentation from NMED Water Protection Division on topics of interest including Clean Water Act triennial review schedule, definition of “Waters of the United States,” and upcoming proposed rule revisions. Rebecca Roose, NMED/Water Protection Division and Shelly Lemon, NMED/SWQB.

Action: Ms. Rebecca Roose and Ms. Shelly Lemon gave a presentation on the Triennial Review, the history and applicability of the definition for “Waters of the United States” and briefed the Commissioners on upcoming proposed rulemaking changes. Ms. Roose and Lemon answered Commissioner questions.

Item 6. Approval of the Final Draft Canadian River Watershed TMDL. John Verheul, New Mexico Environment Department (NMED)/Office of General Counsel (OGC), Rachel Jankowitz and Heidi Henderson, NMED/Surface Water Quality Bureau (SWQB).

Action: Mr. John Verheul explained the procedure for Commission approval of Total Maximum Daily Load (TMDL) Reports. Ms. Rachel Jankowitz and Ms. Heidi Henderson discussed the proposed TMDL for the Canadian River Watershed. After their presentation they answered Commissioner questions. Commissioner Hutchinson moved to approve the Canadian River Watershed TMDL. Commissioner Patten seconded the motion. The Chair called a voice vote. The motion passed unanimously.

Item 7. WQCC 18-04 (CO). In the matter of a compliance order issued to Southwest Capital Bank, Land Development 2, LLC and Club Rio Rancho for groundwater discharge permit DP-1629. Approval of Settlement Agreement between NMED/Groundwater Quality Bureau and Southwest Capital Bank, Land Development 2, LLC. John Verheul, NMED/OGC, Josh Skarsgard for Land Development 2.

Action: Mr. John Verheul briefly introduced the proceedings for the Settlement Agreement in WQCC 18-04(CO). The Commission discussed the proposed settlement agreement. Commissioner Thomson moved to approve the proposed settlement agreement. Commissioner Hutchinson seconded the motion. The Chair called a voice vote. The motion passed unanimously.

Item 8. WQCC 17-07 (A). Creekside Dairy GWQB 17-02 (CO). WQCC 17-08 (A). Rockhill Dairy GWQB 17-03 (CO). Presentation of proposed Joint Settlement Agreement. Christopher Atencio, NMED/OGC; Elizabeth Reitzel Miller Stratvert P.A., and Richard L. Alvidrez, Counsel for Abel Villalpando, Petitioner for Creekside Dairy and Rockhill Dairy.

Action: The Chair asked for agenda item 8 and agenda item 9 to be combined. There were no objections. Ms. Elizabeth Rietzel and Mr. Christopher Atencio introduced the proposed joint settlement agreement and gave a brief background of the proceedings. The Commission discussed and deliberated on the agenda item. The Chair requested informal quarterly reports from both counsel on compliance with the settlement agreement. Commissioner Dominguez moved to approve the settlement agreement with informal quarterly reports. Vice Chair Wade seconded the motion. The Chair called a voice vote. The motion passed unanimously. Mr. Atencio clarified the next procedural steps for filing the agreement.

Item 9. Proposed Joint Settlement Agreement in N.M. Environment Dep't v. Villalpando, A-1-CA-37623, WQCC 17-07 (A), Creekside Dairy GWQB 17-02 (CO), and in N.M. Environment Dep't v. Villalpando, A-1-CA-37619, WQCC 17-08 (A). Rockhill Dairy GWQB 17-03 (CO).

Action: The agenda item was combined with the previous agenda item.

Item 10. Executive Session pursuant to NMSA 1978, Section 10-15-1(H)(7) to discuss pending litigation and Proposed Joint Settlement Agreement in *N.M. Environment Dep't v. Villalpando*, A-1-CA-37623, WQCC 17-07 (A), Creekside Dairy GWQB 17-02 (CO), and in *N.M. Environment Dep't v. Villalpando*, A-1-CA-37619, WQCC 17-08 (A). Rockhill Dairy GWQB 17-03 (CO).

Action: The Commission did not enter into executive session to discuss the proposed joint settlement agreement for WQCC 17-07 (A) and WQCC 17-08 (A).

Item 11. Action on items discussed in Executive Session.

Actions: The Commission did not enter into executive session to discuss the proposed joint settlement agreement for WQCC 17-07 (A) and WQCC 17-08 (A).

Item 12. WQCC 19-02 (A). In the matter of two petitions for review of the Secretary's decision to issue groundwater discharge permit number DP-1840 for the Copper Flat mine. Permit Review. The Commission may deliberate and make a decision at the conclusion of the Permit Review. Andrew Knight, NMED/OGC; Charles de Saillan, counsel for petitioners Turner Ranch Properties, L.P., Hillsboro Pitchfork Ranch, LLC, and Gila Resources Information Project; Samantha Barncastle, counsel for petitioner Elephant Butte Irrigation District; and, Stuart Butzier and Christina Sheehan, counsel for discharge permit applicant New Mexico Copper Corporation.

Action: Ms. Denise Kopan from Albuquerque Court Reporting Services transcribed agenda item 12. The transcript is available for review at the Commission Administrator's Office at 1190 South Saint Francis Drive, Suite S-2102, Santa Fe, New Mexico 87505. A copy can be obtained from Albuquerque Court Reporter Service, LLC, Post Office Box 56787, Albuquerque, New Mexico 87187, or (505) 806-1202.

Mr. Virtue informed the Commission, the parties' counsel, and the members of the public on how public notice was met for the matter in WQCC 19-02 (A). He discussed the protocol for the Public Permit Review. Mr. Virtue allowed 30-minute oral argument in the following order: Charles de Saillan, Samantha Barncastle, Stuart Butzier, then Andrew Knight. After the oral argument, Mr. Virtue allowed a ten-minute rebuttal, in the same order, from each party.

Commissioner Rader moved that the Commission reconvene the next day on Wednesday, August 14, 2019 at 9:00 AM in the same location. Commissioner Dominguez seconded the motion. The Chair called a voice vote. The motion passed unanimously.

Vice Chair Wade moved to enter closed session to deliberate the adjudicatory proceeding in connection with two petitions for review of the Secretary's decision to issue groundwater discharge permit number DP-1840 for the Copper Flat mine, WQCC 19-02 (A). Commissioner McWilliams seconded the motion. The Chair asked for a roll call vote. Commissioner Achrekar: absent; Commissioner Candelaria: aye; Commissioner Certain: aye; Commissioner Dominguez: aye; Commissioner Hutchinson: aye; Commissioner McWilliams: aye; Commissioner Musharrafieh: aye; Commissioner Patten: aye; Chair Pruett: aye; Commissioner Rader: aye; Commissioner Sypher: aye; Commissioner Thomson: absent; Commissioner Timmons: aye; and, Vice Chair Wade: aye. The motion passed 12-0.

Item 13. Executive Session pursuant to NMSA 1978, Section 10-15-1 (H)(3) to deliberate in connection with two petitions for review of the Secretary's decision to issue groundwater discharge permit number DP-1840 for the Copper Flat mine.

Action: In closed session, the Commission deliberated the adjudicatory proceeding in connection with two petitions for review of the Secretary's decision to issue groundwater discharge permit number DP-1840 for the Copper Flat mine, WQCC 19-02 (A). The matters discussed in the closed meeting were limited only to those specified in the motion for closure.

The Commission entered recess, still in executive session, at 5:43 PM and returned from recess the following day, Wednesday August 14, 2019, at 9:02 AM. Commissioner McWilliams attended the meeting after returning from recess via teleconference. Commissioner Hutchinson was absent when the Commission returned from recess.

Commissioner Dominguez moved to exit executive session. Vice Chair Wade seconded the motion. The Chair asked the Commission Administrator for a roll call vote to return to open session at 10:44 a.m. Commissioner Achrekar: aye; Commissioner Candelaria: aye; Commissioner Certain: aye; Commissioner Dominguez: aye; Commissioner Hutchinson: absent; Commissioner McWilliams: aye; Commissioner Musharrafieh: aye; Commissioner Patten: aye; Chair Pruett: aye; Commissioner Rader: aye; Commissioner Sypher: aye; Commissioner Thomson: aye; Commissioner Timmons: aye; and, Vice Chair Wade: aye. The motion passed 13-0. Commission Counsel and the Commission Administrator informed the public outside the committee room that the Commission had returned to open session.

Item 14. Action Items Discussed in Executive Session

Action: The Commission took a break at 10:44 AM and returned to order at 10:53 AM.

Ms. Cheryl Arreguin from Albuquerque Court Reporting Services transcribed agenda item 14. The transcript is available for review at the Commission Administrator's Office at 1190 South Saint Francis Drive, Suite S-2102, Santa Fe, New Mexico 87505. A copy can be obtained from Albuquerque Court Reporter Service, LLC. Post Office Box 56787, Albuquerque, New Mexico 87187, or (505) 806-1202.

Vice Chair Wade moved to sustain the issuance of DP-1840, and direct Counsel to prepare a Final Order reflecting the Commission's discussions and direction in Executive Session. Commission will review and approve the Order at the next regularly scheduled meeting. Commissioner McWilliams seconded the motion. The Chair asked the Commission Administrator for a roll call vote on the motion. Commissioner Achrekar: aye; Commissioner Candelaria: aye; Commissioner Certain: aye; Commissioner Dominguez: aye; Commissioner Hutchinson: absent; Commissioner McWilliams: aye; Commissioner Musharrafieh: aye; Commissioner Patten: aye; Chair Pruett: aye; Commissioner Rader: aye; Commissioner Sypher: aye; Commissioner Thomson: aye; Commissioner Timmons: aye; and, Vice Chair Wade: aye. The motion passed 13-0.

Item 15. Next meeting and upcoming matters proposed for September 10, 2019

Action: There is a request for hearing for the September meeting. There will be a rulemaking hearing on WQCC 19-03 (R) to be held after the regularly scheduled meeting in October. No action was taken.

Item 16. Adjournment

Action: The meeting adjourned at 10:57 AM.



Commission Chair Pruett