



STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION
1190 St. Francis Drive, Room N-4075
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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 Park & Recreation Division
Soil and Water Conservation Bureau
Bureau of Mines and Mineral resources
Member-at-Large

**Minutes of the
New Mexico Water Quality Control Commission Meeting
December 8, 1998**

The New Mexico Water Quality Control Commission (WQCC) meeting was held on December 8, 1998, at 9:00 a.m. in the State Capitol Building, Room 317, Old Santa Fe Trail and Paseo de Peralta, The following members were present:

Peter Maggiore	Chairman, WQCC/NMED
Paul Ritzma	Office of the State Engineer
Bill Olson	Oil Conservation Division
Ricardo Chavez Rel	Department of Agriculture
Howard Hutchinson	Soil & Water Conservation Commission
Lynn Brandvold	Bureau of Mines & Mineral Resources
David Johnson	State Parks Division
Andrew Sandoval	Department of Game & Fish

Absent

Alberto Gutierrez	Member-At-Large
Irene Lee	Member-At-Large
Paul Gutierrez	Member-At-Large

Others Present

Tamella. L. Gonzales	WQCC Administrator
Tannis Fox	WQCC Legal Counsel/AGO
Marcy Leavitt	NMED/Ground Water Bureau
Mike Saladen	LANL
Erik Galloway	NMED/Surface Water Quality Bureau
Dale Doremus	NMED/Ground Water Bureau
Steven Pierce	NMED/Surface Water Bureau
Gary King	NMED/Surface Water Bureau
Susan McMichael	NMED/Office of General Counsel
Jim Davis	NMED/Surface Water Bureau
Maxine Goad	Self
Bill Brancard	State Land Office

Albert R. Cata
Mike Koranda
Ralph Ford-Schmidt
Brian Shields
Deborah Woitte

Pueblo of Tesuque/Camel Rock RV Park
Phelps Dodge
NMED/DOE
Amigos Bravos
LANL

Chairman Maggiore called the meeting to order at 9:08 a.m.

Item 1: Roll Call.

The WQCC Administrator, Tammy Gonzales, took roll call.

Item 2: Approval of the Agenda.

Mr. Hutchinson moved to approve the agenda. Mr. Olson seconded the motion. The motion passed unanimously.

Item 3: Review of the Amended Minutes of April 14, May 12, and August 11, 1998.

Mr. Olson moved to approve the April 14, 1998 minutes with the Commissions changes. Ms. Brandvold seconded the motion. The motion passed unanimously.

Ms. Brandvold moved to approve the May 12, 1998 minutes with the Commissions changes. Mr. Hutchinson seconded the motion. The motion passed unanimously.

Mr. Ritzma moved to approve the August 11, 1998 minutes with the Commissions changes. Mr. Olson seconded the motion. The motion passed unanimously.

Item 4: Review of the Proposed Minutes of November 10, 1998.

Mr. Ritzma moved to approve the proposed minutes with the Commissions changes. Mr. Johnson seconded the motion. The motion passed unanimously.

Item 5: Consideration of Proposed Language for Adjudicatory Hearings by the Environment Department.

Chairman Maggiore congratulated Susan McMichael, Assistant General counsel for the New Mexico Environment Department (NMED), who was traveling to Washington, D.C. to receive an award for a federal policy that she helped to implement.

Ms. McMichael presented a revised proposal to the Commission regarding changes to the Water Quality Act. There are four actions that can be appealed to the WQCC: certification of federal permits, whether a discharge plan is required or not, abatement plans, and discharge permits. The first three actions have no agency-level hearings under the statute or regulations and NMED's proposed change would not affect these actions.

Ms. McMichael stated that the current statute is not clear as to whether there is a hearing before the WQCC after a hearing before NMED has been held, and that the Water Quality Act could be improved and made consistent with administrative law if WQCC review of permits is limited to a record review. The proposed language provides for (1) a record review of permit decisions and (2) remand to the constituent agency where there is additional evidence that was not able to be presented at the hearing and that it is material and not cumulative.

There are already two mechanisms in the WQCC regulations to deal administratively with new evidence. One is the introduction of information or data by the permittee, the agency or anyone, after a discharge permit is issued through a request for modification of the permit. This is also a federal mandate. This route results in a full hearing before NMED. The second mechanism is through an informal appeal in the WQCC Adjudicatory Procedures, which has no limitation on information that can be submitted by the permittee.

Ms. Brandvold asked if a budget for the WQCC would be submitted to the Legislature. Chairman Maggiore stated the NMED is still in discussion with the executive about how the budget will be presented, but that NMED supports the reauthorization of the WQCC.

Mr. Ritzma stated that the changes presented by Ms. McMichael and NMED represented very good language.

Mr. Johnson proposed that the WQCC use NMED's draft letter to David Abbey, LFC, on the sunset review.

Mr. Olson moved to table specific legislative language changes until the next meeting since the Commission was not allowed the opportunity to review the language prior to the meeting. Mr. Johnson seconded the motion. The motion passed unanimously.

Mr. Ritzma moved to support the item number 1, providing that the public membership on the WQCC represent "diverse public interests." Mr. Hutchinson opposed the language. Mr. Johnson stated that he does not understand why there would be any opposition to having a diverse group of interests represented on the WQCC

Mr. Ritzma withdrew his early motion in favor of a motion that the letter to David Abbey and the LFC reflect the WQCC's belief that public representation on the WQCC is extremely important and the statute should be changed to reflect public members-at-large representing "diverse public interest." Mr. Sandoval seconded the new motion.

Mr. Rel asked who determines what diverse means. Chairman Maggiore stated that the Governor would. Mr. Hutchinson stated that the meaning of "diverse" is so broad that it is meaningless.

All WQCC members voted to approve the motion, except Mr. Hutchinson who voted against. The motion passed.

Mr. Olson agreed that the WQCC should conduct a record review of matters for which there had been a hearing before the constituent agency, but wanted more time to look at the specific language proposed.

Mr. Ritzma moved that the Commission adopt as item number 7 of the draft letter to the LFC, that the WQCC conduct a review of issues that have been the subject of a hearing before the agency, with the opportunity to present additional evidence on remand if warranted. Mr. Olson seconded the motion. The motion passed unanimously.

Mr. Johnson moved to adopt the language that penalties collected shall be deposited in the Hazardous Waste Emergency Fund and not the general fund. Mr. Ritzma seconded the motion.

Mr. Rel asked what this fund is used for. Ms. Leavitt stated that one example involved the Espanola wells site where two city wells were taken out of service due to the presence of chlorinated solvents.

The funds were used to conduct an investigation to make sure that contamination did not approach the river. The fund was also used to find out if the plume endangered any other private wells. A second example involved a Roswell PCE plume that had impacted private domestic water supply wells. The public had no mechanism to replace their wells. The funds helped to hook them up to city water. The key to the fund is imminent danger to public health.

All members voted in favor of the motion, except Mr. Hutchinson who abstained. The motion carried.

Mr. Hutchinson stated that the WQCC budget issue should be added to the memorandum.

Ms. Brandvold moved to endorse NMED submitting a line item budget for the WQCC. Mr. Hutchinson seconded the motion.

Mr. Ritzma suggested that it would be better if the WQCC put forth the need for a budget, either through a line item or a statutory change. The LFC would be in a better position to decide the best way to accomplish a separate budget.

Ms. Brandvold amended her motion to reflect Mr. Ritzma's suggestion. Mr. Hutchinson seconded. The motion passed unanimously.

Mr. Ritzma moved to adopt items 2 through 6 as a block. Mr. Johnson seconded the motion. Mr. Ritzma amended his motion to reflect Mr. Hutchinson's suggestion that the first sentence in item number 6 dealing with the Bicycle Racing Commission be struck. Mr. Johnson amended his second. The motion passed unanimously.

Mr. Rel moved to remove item number 7 of the original agenda. Mr. Johnson seconded the motion. The motion passed unanimously.

Item 6: Other Business.

Chairman Maggiore referred to a letter that was addressed to the WQCC from the New Mexico Association of Conservation Districts (NMACD) asking that the WQCC review a resolution recently adopted by the NMACD. Mr. Johnson stated that the letter is an item that the WQCC is reviewing under a current hearing record and it would not be proper for the WQCC to deliberate the issue outside of the hearing process. Ms. Fox recommended that the letter from the NMACD be forwarded to the Hearing Officer in the triennial review to handle it as he sees fit.

Mr. Ritzma moved to forward the letter from the NMACD to the Hearing Officer in the Standards Review. Mr. Johnson seconded the motion. The motion passed unanimously.

Item 7: Report on Litigation and Adjudicatory Matters.

Ms. Fox stated that the NMED has requested a 30 day extension to submit Findings of Fact and Conclusions of Law in the triennial review and there has been no opposition to the motion. The Hearing Officer has granted the motion.

Mr. Hutchinson brought up the issue of the remediation of selenium. Mr. Hutchinson believes that it would be useful to the constituent agencies in looking at the possible remediation of selenium.

Item 8: Next Meeting.

The next meeting of the Commission will be January 12, 1999.

Item 9: Consideration and Approval of the 1998 305(b) Report.

Mr. Hutchinson asked the NMED if it had received any public comment regarding the report. Dr. Jim Davis, Chief, Surface Water Quality Bureau stated that there had not been any public comment to the report. Dr. Davis also stated that there is no requirement for public notice in updating 305(b) report and no requirement in receiving public comment.

Mr. Ritzma moved to dedicate the 305(b) report to the late Secretary Mark E. Weidler. Mr. Rel seconded the motion. The motion passed unanimously.

Mr. Olson moved to approve the 305(b) report as amended by consensus in the meeting. Mr. Hutchinson seconded the motion. The motion passed unanimously.

Copies of the 305(b) report showing the Commission's changes can be obtained by contacting the Commission Administrator, Tammy Gonzales at (505) 827-2425.

The meeting adjourned at 5:02 p.m.


Chairman