

**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
Department of Health
State Parks Division
Soil and Water Conservation Commission
Bureau of Geology and Mineral Resources
Municipal/County Representative
Members-at Large

New Mexico Water Quality Control Commission Meeting

March 11, 2008

9:00 a.m.

New Mexico State Capitol Building

Room 317

490 Old Santa Fe Trail

Santa Fe, New Mexico 87501

MEMBERS PRESENT:

Jon Goldstein	NMED/Deputy Secretary
Cheryl Bada	State Parks Division
Greg Lewis	Office of the State Engineer
Larry Dominguez	Department of Agriculture
Len Flowers	Department of Health
Howard Hutchinson	Soil and Water Conservation Commission
Peggy Johnson	Bureau of Geology and Mineral Resources
Steve Glass	City of Albuquerque – Municipal/County Representative
Mike Sloane	Department of Game & Fish

MEMBERS ABSENT:

Glenn Von Gonten	Oil Conservation Division
Maxine Goad	Member-at-Large
Edward Vigil	Member-at-Large

OTHERS PRESENT:

Louis W. Rose, LES
John Lawrence, LES
Richard Edleman
Jerry Schoeppner
Stephen Jerge
Janet Greenwald, CARD
Kelly Collins
Susan Maupin
Tannis Fox, NMED/OGC
Joyce Medina, NMED/OOTS

Bill Olson, NMED/GWB
David Propst, Dept. of Game & Fish
Dennis Romero, Esq.
Robert Gallegos
Steven Paul
Gary Martinez
John L. Jones
Zachary Shandler, Atty.General's Office
Anna Leyba, NMED/OOTS

The meeting was called to order by Mr. Goldstein at 9:00 a.m.

Item 1. Roll Call:

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

Item 2. Approval of Agenda

The Chair asked if there were any changes the Commission wished to make in the Agenda.

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

Item 3. Election of Commission Chair

Mr. Hutchinson moved to elect Jon Goldstein, Deputy Secretary of NMED, Chair of the Commission. Mr. Glass seconded. The motion passed unanimously.

Item 4. Approval of the December 11, 2007 meeting minutes.

Action: Ms. Bada moved to approve the minutes. Mr. Lewis seconded. The motion passed unanimously.

Item 5. 2008 Open Meetings Act Resolution approval by the Commission

Mr. Shandler noted that yearly adoption of the Resolution was required by the Open Meetings Act and that the 2008 version had been distributed to each Commissioner.

Action: Mr. Sloane moved for approval of the 2008 Open Meetings Act Resolution. Mr. Dominguez seconded. The motion passed unanimously.

Item 6. Request for postponement of hearing in re: Proposed Amendments to 20.7.4.97 NMAC, Utility Operators Advisory Board Certification, WQCC 07-09 (R). Misty Braswell, NMED/OGC.

Ms. Braswell noted that a new setting in this case was necessary due to problems with the publication of the notice of hearing. She requested a setting on the Commission's June 10, 2008 meeting agenda for this matter to be heard.

There was a lengthy discussion about this request because June 10th is the date designated for deliberations in WQCC 03-12(A) and WQCC 03-13 (A), the appeal of the supplemental discharge permit (DP-1341) in the Phelps Dodge Tyrone, Inc. matter.

Action: Mr. Glass moved that the hearing in WQCC 07-09 (R), Proposed Amendments to 20.7.4.97 NMAC, Utility Operators Advisory Board Certification be set on the Commission's June 10, 2008 agenda and that the hearing be conducted prior to the Phelps Dodge Tyrone deliberations. Mr. Lewis seconded. The motion passed unanimously.

Item 7. In re: WQCC 07-11 (A) Appeal of Discharge Permit #1948 denial, Alta Vista Subdivision, Taos County – consideration of motions to intervene; withdrawal of prior scheduling order and NMED and Petitioner's Second Stipulated Motion for Scheduling Order. Tannis Fox, NMED/OGC; Dennis Romero, Esq., appearing for the Appellant.

The Chair mentioned that Link Summers, a person interested in this item, requested that he be permitted to attend the meeting by telephone because injuries he suffered in a recent automobile accident prevent him from being at the meeting. Mr. Goldstein asked Anna Leyba, NMED staff member, to contact Mr. Summers on a multi-party conference telephone that had been installed in the meeting room for this purpose. Ms. Leyba made three attempts to reach Mr. Summers but all of those calls were answered by his voice mail. The Chair then left Mr. Summers his cell phone number to use to call in to attend the meeting. In leaving his number for Mr. Summers, Mr. Goldstein additionally noted that the Commission would proceed with consideration of this agenda item.

Mr. Romero and Ms. Fox indicated that there were no objections to the motions to intervene.

Mr. Shandler stated that he would prepare an order granting the motions to intervene and also noted that NMED and the Petitioner had filed a second Stipulated Motion for Scheduling Order. He further indicated that since the stipulated motion was uncontested, the Chair could sign the Scheduling Order at this time. He went on to state that the intervenors will also be subject to the provisions of the Scheduling Order.

Ms. Fox noted for the record that she had sent copies of the second Stipulated Motion for Scheduling Order and the draft Scheduling Order to the intervenors.

Mr. Romero stated that he felt the Scheduling Order was appropriate particularly since two lengthy hearings had been conducted in this case and additionally, it comported well with current appellate procedures.

The Chair stated that because he had prior involvement in the case noted below as Item 8, he was recusing himself from participation in these deliberations. He indicated that Lynn Harris would be sitting as the NMED representative on the Commission. He then turned the meeting over to Commission Member Steve Glass, the designated Chair.

Item 8. Deliberations in re: CARD Request for Review of Findings and Conclusions in the Eunice LES Discharge Permit (DP-1481), WQCC 07-03 (A). Tannis Fox, NMED/OGC; Louis W. Rose, Esq., LES; Janet Greenwald, CARD. Commission Member Steve Glass acted as Chair for this matter.

The Chair, in opening the proceeding, noted that this matter is the first request for review of findings and conclusions and was taking place as the result of new legislation. He went on to state that given the lack of prior experience, the Commission would move forward very carefully with respect to this matter.

He then asked the parties whether or not they wished to make verbal statements summarizing their respective positions. Following discussion, it was decided that providing such summaries would be helpful. It was agreed that the statements would be limited to approximately twenty minutes and that Ms. Greenwald would present CARD's summary first, Ms. Fox would then present the bulk of NMED and LES's summary and Mr. Rose, if he felt it necessary, would make a very brief statement following Ms. Fox's presentation.

Following the statements by Ms. Greenwald, Ms. Fox and Mr. Rose, there was a lengthy discussion by the Commission relating to the issues set forth by the parties.

Action: Mr. Sloane moved that the Commission sustain the decision and adopt the Hearing Officer's Report as the Commission's Findings of Fact and Conclusions of Law in WQCC 07-03 (A). Ms. Bada seconded.

There was a brief discussion wherein the Commission members acknowledged that they believed they had met review criteria and that the Department's decision was neither arbitrary nor capricious.

By a unanimous vote the original decision is upheld and the Hearing Officer's Report is adopted as the Commission's Findings of Fact and Conclusions of Law.

Mr. Shandler noted that he would prepare a brief order summarizing Commission discussions and referencing the Hearing Officer's Findings of Fact and Conclusions of Law.

Mr. Glass returned the Chairmanship of the meeting back to Mr. Goldstein.

Item 9. Request for amendment to WQCC Order No. 01-10, approving the use of a piscicide in the Upper West Fork of the Gila River drainage, to extend the period for application and to allow the substitution of CFT Legumine for antimycin A; or in the alternative to request a hearing on a Petition reflecting these changes. David Propst, Presenter

Dr. Propst requested Commission approval of a substitution of the piscicide currently being used in the Upper West Fork of the Gila River drainage by the Department of Game and Fish. He stated that the request was being made because Game and Fish had found that the active ingredient in the piscicide Fentrol appeared to have been compromised and was not producing the desired impact upon fish populations. He further explained that the Department did not wish to amend any other provision of WQCC Order No. 01-10 except with respect to the type of piscicide being used in the area and the time period for such use.

Following Dr. Propst's request, considerable Commission discussion ensued regarding the impact of making the requested change in the type of piscicide without scheduling a new hearing.

Action: Mr. Sloane moved to amend the original Order No. 01-10 to allow the use of CFT Legumine in the restoration of Gila trout in the Upper West Fork of the Gila River drainage. Ms. Bada seconded.

There was discussion regarding toxicological issues and impacts upon the area of application.

Mr. Hutchinson moved a substitute motion asking for a hearing on the petition requesting the change in the piscicide.

Mr. Sloane called the question on the first motion.

The Chair requested a roll-call vote.

Roll Call:

Mr. Goldstein	no
Mr. Lewis	no
Ms. Bada	pass
Mr. Glass	no
Mr. Dominguez	pass
Mr. Sloane	yes
Mr. Hutchinson	no
Ms. Johnson	no
Ms. Flowers	no

The motion failed.

Mr. Hutchinson again moved a substitute motion asking for a hearing on the petition requesting the change in the piscicide. Mr. Glass seconded and proposed a friendly amendment naming the Commission

Chair as Hearing Officer.

The Chair noted that he had discussed this matter with Felicia Orth, NMED's Hearing Officer, and she had agreed to act as Hearing Officer in this case. He additionally noted that the hearing would be held in Silver City.

Mr. Glass amended his friendly amendment to name Felicia Orth as Hearing Officer and that Silver City be designated as the hearing location in this matter.

Mr. Sloane asked if the Game and Fish Department had a time constraint in handling this matter. Dr. Propst stated that the Department did have a very short window of opportunity to disburse the piscicide and would request a hearing setting at the earliest opportunity. It was agreed that Ms. Orth would be informed of the timing issues in setting the matter for hearing.

Roll Call:

Mr. Goldstein	yes
Mr. Lewis	yes
Ms. Bada	yes
Mr. Glass	yes
Mr. Dominguez	yes
Mr. Sloane	no
Mr. Hutchinson	yes
Ms. Johnson	yes
Ms. Flowers	yes

The motion passed.

Item 10. Other business

There was a very brief discussion regarding keeping the Department of Game and Fish, the Commission and NMED apprised of scheduling dates in the piscicide case.

Item 11. Next Meeting – April 8, 2008, at 9:00 a.m. , Room 307 State Capitol Bldg.

Item 12. The Chair adjourned the meeting at 11: 20 a.m.




Jon Goldstein, Acting Chair
Water Quality Control Commission