STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION
1190 St. Francis Drive, Room N2150
Post Office Box 26110
Santa Fe, New Mexico 87502
Telephone (505) 827-2425   Fax (505) 827-0310

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

MEMBERS PRESENT:
29 Ron Curry       Chairman, New Mexico Environment Department
30 Doug Murray     Office of State Engineer
31 Julie Maitland  Department of Agriculture
32 Steve Glass     City of Albuquerque - Municipal/County Representative
33 Lynn Brandvold  Bureau of Geology and Mineral Resources
34 Maxine Goad     Member-at-Large
35 Edward Vigil    Member-at-Large
36 Mike Sloane     Department of Game and Fish
37 Bill Olson      Oil Conservation Division
38 David Johnson   State Parks Division

MEMBERS ABSENT:
41 Wilfred Garcia  Member-at-Large

OTHERS PRESENT:
44 Zack Schandler, WQCC Counsel
45 Geraldine Madrid-Chavez, WQCC Administrator
46 Glenn Saums
47 Phil Wardwell
48 Leon Eggleston
49 Dal Moellenberg

Jolene L. McCaleb
Marcy Leavitt
Charles Nylander
Chris Mechels
Mike Saladen
Joyce Sheaner

The New Mexico Water Quality Control Commission (WQCC) meeting was held on April 8, 2003, at the New Mexico State Capitol Building, Room 317 in Santa Fe, New Mexico.

Minutes of the
New Mexico Water Quality
Control Commission Meeting
April 8, 2003

APPROVED 05-13-03
Chairman Ron Curry called the meeting of the WQCC to order at 9:08 am.

**Item #1: Roll Call**

Geraldine Madrid-Chavez, WQCC Administrator, took roll and noted a quorum was present.

**Item #2: Approval of the Agenda**

The following changes were made:

- Commissioner Brandvold requested that items 9 and 10 be reversed.

**ACTION:** Commissioner Brandvold moved to approve the agenda as amended. Commissioner Johnson seconded. Motions carried unanimously.

**Item #3: Approval of the November 12, 2002 & December 16, 2002 Meeting Minutes.**

**ACTION:** After discussion and amendments, Commissioner Brandvold moved to approve the minutes of November 12, 2002 as amended. Commissioner Glass seconded. Motion carried unanimously.

**ACTION:** After discussion and amendments, Commissioner Olson move to approve the minutes of December 16, 2002 as amended. Commissioner Johnson seconded. Motion carried unanimously.

**Item #4: Election of Chairman and Other Necessary Officers**

**ACTION:** Commissioner Olson made a motion that the Secretary of the New Mexico Environment Department serve as the Chair of the Water Quality Control Commission. Commissioner Johnson seconded. Motion carried unanimously.

The Commissioners introduced themselves and provided a brief background.

**Item #5: Setting for hearing in the matter of North Park Mobile Home Park. (WQCC 03-02C)**
Marcy Leavitt, Chief of the Ground Water Bureau, informed the Commission that a hearing for the North Park Mobile Home Park (CO) must be held before June 19, 2003. Ms. Leavitt requested that the hearing be scheduled for June 10, 2003 at the Water Quality Control Commission regularly scheduled meeting.

**ACTION:** Commissioner Glass moved to schedule this hearing for June 10, 2003 and that the Chair of the Commission sit as the hearing Officer. Commissioner Brandvold seconded. Motion carried unanimously.

**Item #6:** Request for remand to the Hearing Officer following informal appeal of DP 1341 for action on the Ground Water Bureau’s motion for reconsideration. (Phelps Dodge Tyrone – GWB 02-02)

Charles DeSaillen, Counsel for the Ground Water Bureau, requested the Commission remand the above matter to the Department’s Hearing Officer so the Hearing Officer can make a decision on the Bureau’s motion for reconsideration.

Stewart Butzier, of Modrall, Sperling Law Firm, Counsel for Phelps Dodge Tyrone, stated that Tyrone objects to the request to remand back to the Hearing Officer.

Roderick Ventura, of New Mexico Environmental Law Center, Counsel for Gila Resources Information Project (GRIP), stated that GRIP filed a formal appeal on this matter, which under statute must be heard within 90 days. Mr. Ventura stated his clients are willing to waive their right to hearing within 90 days to allow the WQCC to remand the issues the Ground Water Bureau has addressed back to the Hearing Officer.

Brian Lematta, of Rodey, Dickason, Sloan, Akin & Robb Law Firm, Counsel for the Citizens for Economic Growth and Environmental Protection, stated his clients join Phelps Dodge in opposing the motion of the New Mexico Environment Department Ground Water Bureau to remand two issues back to the Hearing Officer.

**ACTION:** Commissioner Johnson moved to table the above matter until the return of the Commission’s Legal Counsel. Commissioner Olson seconded. Motion carried unanimously.

**Item #7:** Request by the Environment Department Surface Water Quality Bureau to initiate the Federal Clean Water Act §303(c) Triennial Review of the Standards for Interstate and Intrastate Surface Waters, 20.6.4 NMAC and to appoint a hearing officer and assign powers to hearing officer to develop draft scheduling order and hearing guidelines.

Dr. Davis, Chief of the Surface Water Quality Bureau, requested that the WQCC initiate the Federal Clean Water Act §303(c) Triennial Review of the Standards for Interstate and Intrastate Surface Waters, 20.6.4 NMAC and appoint a hearing officer and assign powers to the hearing officer to develop the draft scheduling order and hearing guidelines.
ACTION: Commissioner Sloane moved to allow the WQCC Chair to appoint a Hearing Officer and assign powers to the Hearing Officer to draw up a draft scheduling order and hearing guidelines in this matter. Commissioner Brandvold seconded. Motion carried unanimously.

ACTION: Commissioner Olson offered a friendly amendment that the motion includes the Order for Appointment of the Hearing Officer and Assignment of the Hearing Officer Duties as prepared by the Commissions Counsel. Commissioner Sloane and Commissioner Brandvold accepted the friendly amendment. Motion carried unanimously.

Commissioner Maitland made a request that if any e-mails are sent to Commissioners with an attachment, please have hard copies of the attachment at the meetings.

ACTION: Commissioner Johnson moved to take a 15 minute recess. Commissioner Sloane seconded. Motion carried unanimously.

Commission Counsel returned during this break.

ACTION: Commissioner Johnson moved to remove item #6 from the table and consider it at this time. Commissioner Olson seconded. Motion carried unanimously.

Item #6: Request for remand to the Hearing Officer following informal appeal of DP 1341 for action on the Ground Water Bureau motion for reconsideration. (Phelps Dodge Tyrone – GWB 02-02)

Mr. Shandler, Counsel for the WQCC, discussed the following two options with the Commission:

1. The Commission could grant the motion to remand back to the Hearing Officer for the Hearing Officer to reconsider substantive questions from the Environment Department, or
2. The Commission could deny the motion to remand back to the Hearing Officer.

After a lengthy discussion and questions by the Commissioners the following action was taken:

ACTION: Commissioner Sloane moved to deny the request for remand. Commissioner Maitland seconded. Motion carried unanimously.

Item #8: Consideration of Hearing Officer’s recommended decision and possible decision in the matter of the petition of the Department of Game and Fish for approval of the use of a Piscicide in Upper West Fork of the Gila River Drainage – Catron County, New Mexico. (WQCC 01-10)

Ms. Felicia Orth presented to the Commission the Hearing Officer’s Report.

Dr. McCampbell presented her comments to the Commission via telephone.
Frank Weisbarth, Counsel for Game & Fish, presented his comments to the Commission.

At this time the Commissioners discussed the Hearing Officer’s Report and the following action was taken:

**ACTION:** Commissioner Murray moved to adopt the Hearing Officer’s Report as presented. Commissioner Sloane seconded. Motion carried unanimously.

At this time the Commissioners began deliberations. The following suggestions were made:

**ACTION:** Commissioner Sloane moved to accept the Hearing Officer’s Draft Order and Petitioners Findings of Fact and Conclusion of Law as presented. Commission Maitland seconded.

Commissioner Olson offered the following friendly amendments to the finding of facts:
- Page 2 after finding #5 adding the finding, “subsequent to the submission of the petition, the Chiricahua leopard frog was federally listed as a threatened species under the Endangered Species Act.”
- Add another finding to read; “the Fintrol label states that the concentration level suggested by table 1 should be confirmed by an on-site bioassay.”
- Page 3, #12, replace the words “the Upper West Fork Gila River” with the words “a drainage watershed”
- Page 7, strike second sentence of #38 and strike all of #39, #40, 42 and 43.
- Page 10, in the conclusion of law, #13, replace the words “Truth or Consequences” with the word “Bayard.”

Commissioner Olson offered the following friendly amendments to the order:
- Item #4, strike the word “within” and replace it with the word “during.” Strike the word “area.”
- Item #5, insert “Fingerling trout shall be used in livecars.”
- Item #6, per Commissioner Glass, insert a new sentence to read; “Include nonoxynol-9 if an appropriate test can be identified.”
- Item #7, per Commissioner Murray, should read; “The New Mexico Department of Game and Fish shall brief the WQCC on or before December 31 of each year on the progress of these projects.”
- Item #11, should read; “Due to the remote location, the Department shall make all reasonable efforts to have New Mexico Agriculture pesticide inspectors on site during the deployment to monitor the Department’s application of the piscicide.”
- Item #12, strike the word “restrictive” and replace it with the word “restricted.”
- Item #14, per Commissioner Glass, should read; “The Department shall conduct a bioassay, using fish from the treatment area and in accordance with procedures established by the manufacturer, to determine the optimal concentration of antimycin to be deployed.”
Commissioner Glass offered the following friendly amendment to the order:
- Item #13, after the word "prepared" insert, "by the U.S. Fish and Wildlife Service."

Commissioner Murray offered the following friendly amendment to the order:
- Item #1, should read; "The petition is approved April 8, 2003. The project is anticipated to be completed by December 31, 2006."
- Item #3, should read; "The Department shall provide reasonable notice to all downstream users within 20 miles of the terminus of the project and post appropriate signage at trailheads at least ten days prior to such use."

Commissioner Sloane accepted all friendly amendments.

ACTION: Commissioner Goad moved to incorporate all changes. Commissioner Sloane seconded. Motion carried unanimously.

Item #9 Previously Item #10

Mr. Mechels requested that the Surface Water Quality Bureau make their presentation on the revised Introduction and Work Element 11 (Public Participation Program) of the New Mexico Statewide Water Quality Management Plan before he would be requesting a hearing.

ACTION: Commissioner Sloane moved to have a presentation of the introduction and Work Element 11 today, which will start a 30-day comment period, and at the next meeting the Commission will either adopt or do whatever is necessary to put this into the Water Quality Management Plan. Commissioner Brandvold seconded.

After discussion Commission Sloane withdrew his motion and Commissioner Brandvold withdrew her second.

ACTION: Commissioner Sloane moved to table item #9. Commissioner Maitland seconded. Motion carried unanimously.

Item #10 Previously Item #9
Presentation and possible action on the revised Introduction and Work Element 11 (Public Participation Program) of the New Mexico Statewide Water Quality Management Plan.

Dr. Davis, Chief of the Surface Water Quality Bureau, introduced Ms. Stephanie Stringer to the Commission. Ms. Stringer gave a presentation on the revised Introduction and Work Element 11
(Public Participation Program) of the New Mexico Statewide Water Quality Management Plan, which covered the following:

- History behind these changes.
- Public participation requirements for revisions to WQMP.
- Public Participation Activities Conducted January – April 2003.
- Proposed Revisions.
- Public Comments Received.
- Comments received on Introduction and incorporated into document.
- Comments received on Work Element 11 and incorporated into document.

Ms. Stringer stated that the Surface Water Quality Bureau is requesting the Water Quality Control Commission adopt the proposed revision to the Water Quality Management Plan Introduction and Work Element 11 with comments incorporated.

At this time Ms. Joni Arends announced that she would like to withdraw her motion for hearing.

After discussion of this matter, the following action was taken:

**ACTION:** Commissioner Johnson moved to take item #9 off the table. Commissioner Olson seconded. Motion carried unanimously.

**Item #9** Previously Item #10

Ms. Joni Arends of CCNS again announced that she would like to withdraw her motion for hearing.

After discussion between Mr. Mechels, Mr. Ames and the Commission, the following actions were taken.


**ACTION:** Commissioner Glass moved to remove agenda item 10 from the table. Commissioner Johnson seconded. Motion carried unanimously.

(Editor’s note: Due to re-numbering of agenda items. There was confusion whether items #9 and #10 were taken off the table.)
ACTION: Commissioner Glass moved that the Commission defer decision on the Introduction and Work Element 11 Statewide Quality Management Plan until the regularly scheduled May meeting during which time the interested parties may provide comment only on the amendments incorporated by the Environment Department in response to their original comments. Commissioner Brandvold seconded.

Following discussion,

Commissioner Glass withdrew his motion. Commissioner Brandvold withdrew her second.

ACTION: Commissioner Johnson moved to table agenda item #10 until the May regularly scheduled meeting. Commissioner Maitland seconded. Motion carried unanimously.

Item #11 Executive Session pursuant to NMSA 1978, Section 10-15-1(H)(7) to discuss Regents of the University of California v. New Mexico Water Quality Control Commission.

ACTION: Commissioner Olson moved to go into Executive Session pursuant to NMSA 1978, Section 10-15-1 (H)(7) to discuss Regents of the University of California v. New Mexico Water Quality Control Commission. Commissioner Glass seconded. A roll call vote was conducted and the results are as follows:

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<th>Commissioner</th>
<th>Vote</th>
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<tr>
<td>Vigil</td>
<td>Yes</td>
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<td>Goad</td>
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<td>Brandvold</td>
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<td>Sloane</td>
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<td>Maitland</td>
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<td>Glass</td>
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<td>Johnson</td>
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<td>Murray</td>
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<td>Curry</td>
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Motion carried with 1 no vote by Commissioner Curry.

ACTION: Commissioner Brandvold moved to come out of Executive Session. Commissioner Glass seconded. A roll call vote was conducted and the results are as follows:

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<td>Maitland</td>
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Commissioner Glass            Yes
Commissioner Johnson          Yes
Commissioner Olson            Yes
Commissioner Murray           Yes
Commissioner Curry            Yes

Motion carried unanimously.

Commissioner Johnson stated the matter discussed in closed session was only that matter specified in the motion.

ACTION: Commissioner Olson moved to reject the offer presented by LANL Counsel.
Commissioner Sloane seconded. Motion carried unanimously.

Item #12 Other business

Commissioner Brandvold requested that the Commission draft a letter to the 4 Commission members who left the Commission in December expressing our appreciation for their hard work and helping the Commission to conduct business.

Commissioner Olson questioned the status of the Casey Luna Appeal. Mr. Shandler informed the Commission that the Casey Luna Appeal was turned into an Informal Appeal.

Item #13 Next meeting

The next meeting of the Water Quality Control Commission will be May 13-14, 2003 in Santa Fe, New Mexico.

ACTION: Commissioner Sloane moved to adjourn. Commissioner Maitland seconded. Motion carried unanimously.

Ron Curry, WQCC Chair

minutes of WQCC meeting 04/08/03