



**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

- 7 Environment Department
- 8 Office of State Engineer
- 9 Game and Fish Department
- 10 Oil Conservation Division
- 11 Department of Agriculture
- 12 State Parks Division
- 13 Soil and Water Conservation Commission
- 14 Bureau of Geology and Mineral Resources
- 15 Municipal/County Representative
- 16 Members -at Large

APPROVED 05-13-03

- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35
- 36
- 37
- 38
- 39
- 40
- 41
- 42
- 43
- 44
- 45
- 46
- 47
- 48
- 49

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

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.

MEMBERS PRESENT:

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

MEMBERS ABSENT:

- Wilfred Garcia Member-at-Large

OTHERS PRESENT:

- Zack Schandler, WQCC Counsel Jolene L. McCaleb
- Geraldine Madrid-Chavez, WQCC Administrator Marcy Leavitt
- Glenn Saums Charles Nylander
- Phil Wardwell Chris Mechels
- Leon Eggleston Mike Saladen
- Dal Moellenberg Joyce Sheaner

1 John Montgomery
2 Joni Arends
3 William Maxwell
4 Kelly Bitner
5 Gene Turner
6 Ralph Ford-Schmidt
7 Felicia Orth
8 Brian Lematta
9 Roderick Ventura
10 Dave Hogge

Barbara Kilay
Louis Rose
Stephanie Stringer
Elaine Cimino
Lynette Stevens
Frank Weisbarth
Tracy Hughes
Stuart Butzier
Jim Davis
Tannis Fox

11
12 Chairman Ron Curry called the meeting of the WQCC to order at 9:08 am.

13
14 **Item #1: Roll Call**

15
16 Geraldine Madrid-Chavez, WQCC Administrator, took roll and noted a quorum was present.

17
18 **Item #2: Approval of the Agenda**

19
20 The following changes were made:

- 21
22 • Commissioner Brandvold requested that items 9 and 10 be reversed.

23
24 **ACTION: Commissioner Brandvold moved to approve the agenda as amended.**
25 **Commissioner Johnson seconded. Motions carried unanimously.**

26
27 **Item #3: Approval of the November 12, 2002 & December 16, 2002 Meeting Minutes.**

28
29 **ACTION: After discussion and amendments, Commissioner Brandvold moved to**
30 **approve the minutes of November 12, 2002 as amended. Commissioner**
31 **Glass seconded. Motion carried unanimously.**

32
33 **ACTION: After discussion and amendments, Commissioner Olson move to approve the**
34 **minutes of December 16, 2002 as amended. Commissioner Johnson**
35 **seconded. Motion carried unanimously.**

36
37 **Item #4: Election of Chairman and Other Necessary Officers**

38
39 **ACTION: Commissioner Olson made a motion that the Secretary of the New Mexico**
40 **Environment Department serve as the Chair of the Water Quality Control**
41 **Commission. Commissioner Johnson seconded. Motion carried**
42 **unanimously.**

43
44 The Commissioners introduced themselves and provided a brief background.

45
46 **Item #5: Setting for hearing in the matter of North Park Mobile Home Park. (WQCC**
47 **03-02C)**

1
2 Marcy Leavitt, Chief of the Ground Water Bureau, informed the Commission that a hearing for
3 the North Park Mobile Home Park (CO) must be held before June 19, 2003. Ms. Leavitt
4 requested that the hearing be scheduled for June 10, 2003 at the Water Quality Control
5 Commission regularly scheduled meeting.
6

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

10
11 **Item #6: Request for remand to the Hearing Officer following informal appeal of DP**
12 **1341 for action on the Ground Water Bureau's motion for reconsideration.**
13 **(Phelps Dodge Tyrone – GWB 02-02)**
14

15 Charles DeSaillen, Counsel for the Ground Water Bureau, requested the Commission remand the
16 above matter to the Department's Hearing Officer so the Hearing Officer can make a decision on
17 the Bureau's motion for reconsideration.
18

19 Stewart Butzier, of Modrall, Sperling Law Firm, Counsel for Phelps Dodge Tyrone, stated that
20 Tyrone objects to the request to remand back to the Hearing Officer.
21

22 Roderick Ventura, of New Mexico Environmental Law Center, Counsel for Gila Resources
23 Information Project (GRIP), stated that GRIP filed a formal appeal on this matter, which under
24 statute must be heard within 90 days. Mr. Ventura stated his clients are willing to waive their
25 right to hearing within 90 days to allow the WQCC to remand the issues the Ground Water
26 Bureau has addressed back to the Hearing Officer.
27

28 Brian Lematta, of Rodey, Dickason, Sloan, Akin & Robb Law Firm, Counsel for the Citizens for
29 Economic Growth and Environmental Protection, stated his clients join Phelps Dodge in
30 opposing the motion of the New Mexico Environment Department Ground Water Bureau to
31 remand two issues back to the Hearing Officer.
32

33 **ACTION: Commissioner Johnson moved to table the above matter until the return of**
34 **the Commission's Legal Counsel. Commissioner Olson seconded. Motion**
35 **carried unanimously.**
36

37 **Item #7: Request by the Environment Department Surface Water Quality Bureau to**
38 **initiate the Federal Clean Water Act §303(c) Triennial Review of the**
39 **Standards for Interstate and Intrastate Surface Waters, 20.6.4 NMAC and to**
40 **appoint a hearing officer and assign powers to hearing officer to develop**
41 **draft scheduling order and hearing guidelines.**
42

43 Dr. Davis, Chief of the Surface Water Quality Bureau, requested that the WQCC initiate the
44 Federal Clean Water Act §303(c) Triennial Review of the Standards for Interstate and Intrastate
45 Surface Waters, 20.6.4 NMAC and appoint a hearing officer and assign powers to the hearing
46 officer to develop the draft scheduling order and hearing guidelines.
47

1 **ACTION:** **Commissioner Sloane moved to allow the WQCC Chair to appoint a Hearing**
2 **Officer and assign powers to the Hearing Officer to draw up a draft**
3 **scheduling order and hearing guidelines in this matter. Commissioner**
4 **Brandvold seconded. Motion carried unanimously.**
5

6 **ACTION:** **Commissioner Olson offered a friendly amendment that the motion includes**
7 **the Order for Appointment of the Hearing Officer and Assignment of the**
8 **Hearing Officer Duties as prepared by the Commissions Counsel.**
9 **Commissioner Sloane and Commissioner Brandvold accepted the friendly**
10 **amendment. Motion carried unanimously.**
11

12 Commissioner Maitland made a request that if any e-mails are sent to Commissioners with an
13 attachment, please have hard copies of the attachment at the meetings.
14

15 **ACTION:** **Commissioner Johnson moved to take a 15 minute recess. Commissioner**
16 **Sloane seconded. Motion carried unanimously.**
17

18 Commission Counsel returned during this break.
19

20 **ACTION:** **Commission Johnson moved to remove item #6 from the table and consider it**
21 **at this time. Commissioner Olson seconded. Motion carried unanimously.**
22

23 **Item #6:** **Request for remand to the Hearing Officer following informal appeal of DP**
24 **1341 for action on the Ground Water Bureau motion for reconsideration.**
25 **(Phelps Dodge Tyrone – GWB 02-02)**
26

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

- 29 1. The Commission could grant the motion to remand back to the Hearing Officer for the
30 Hearing Officer to reconsider substantive questions from the Environment Department,
31 or
- 32 2. The Commission could deny the motion to remand back to the Hearing Officer.
33

34 After a lengthy discussion and questions by the Commissioners the following action was taken:
35

36 **ACTION:** **Commissioner Sloane moved to deny the request for remand. Commissioner**
37 **Maitland seconded. Motion carried unanimously.**
38

39 **Item #8:** **Consideration of Hearing Officer's recommended decision and possible**
40 **decision in the matter of the petition of the Department of Game and Fish for**
41 **approval of the use of a Piscicide in Upper West Fork of the Gila River**
42 **Drainage – Catron County, New Mexico. (WQCC 01-10)**
43

44 Ms. Felicia Orth presented to the Commission the Hearing Officer's Report.
45

46 Dr. McCampbell presented her comments to the Commission via telephone.
47

1 Frank Weisbarth, Counsel for Game & Fish, presented his comments to the Commission.

2
3 At this time the Commissioners discussed the Hearing Officer's Report and the following action
4 was taken:

5
6 **ACTION: Commissioner Murray moved to adopt the Hearing Officer's Report as**
7 **presented. Commissioner Sloane seconded. Motion carried unanimously.**
8

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

10
11 **ACTION: Commissioner Sloane moved to accept the Hearing Officer's Draft Order**
12 **and Petitioners Findings of Fact and Conclusion of Law as presented.**
13 **Commission Maitland seconded.**
14

15 Commissioner Olson offered the following friendly amendments to the
16 finding of facts:

- 17 - Page 2 after finding #5 adding the finding, "subsequent to the submission
18 of the petition, the Chiricahua leopard frog was federally listed as a
19 threatened species under the Endangered Species Act."
- 20 - Add another finding to read; "the Fintrol label states that the
21 concentration level suggested by table 1 should be confirmed by an on-
22 site bioassay."
- 23 - Page 3, #12, replace the words "the Upper West Fork Gila River" with
24 the words "a drainage watershed"
- 25 - Page 7, strike second sentence of #38 and strike all of #39, #40, 42 and 43.
- 26 - Page 10, in the conclusion of law, #13, replace the words "Truth or
27 Consequences" with the word "Bayard."
- 28

29 Commissioner Olson offered the following friendly amendments to the order:

- 30 - Item #4, strike the word "within" and replace it with the word "during."
31 Strike the word "area."
- 32 - Item #5, insert "Fingerling trout shall be used in livecars."
- 33 - Item #6, per Commissioner Glass, insert a new sentence to read; "Include
34 nonoxynol-9 if an appropriate test can be identified."
- 35 - Item #7, per Commissioner Murray, should read; "The New Mexico
36 Department of Game and Fish shall brief the WQCC on or before
37 December 31 of each year on the progress of these projects."
- 38 - Item #11, should read; "Due to the remote location, the Department shall
39 make all reasonable efforts to have New Mexico of Agriculture pesticide
40 inspectors on site during the deployment to monitor the Department's
41 application of the piscicide."
- 42 - Item #12, strike the word "restrictive" and replace it with the word
43 "restricted."
- 44 - Item #14, per Commissioner Glass, should read; "The Department shall
45 conduct a bioassay, using fish from the treatment area and in accordance
46 with procedures established by the manufacturer, to determine the
47 optimal concentration of antimycin to be deployed."

1
2 **Commissioner Glass offered the following friendly amendment to the order:**

- 3 - **Item #13, after the word "prepared" insert, "by the U.S. Fish and**
4 **Wildlife Service."**

5
6 **Commissioner Murray offered the following friendly amendment to the**
7 **order:**

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

13
14 **Commissioner Sloane accepted all friendly amendments.**

15
16 **ACTION: Commissioner Goad moved to incorporate all changes. Commissioner**
17 **Sloane seconded. Motion carried unanimously.**

18
19 **Item #9 Previously Item #10**
20 **Setting for hearing on the Proposed Revisions to the Statewide Water**
21 **Quality Management Plan, Introduction & Work Element 11. Requested by**
22 **Chris Mechels & Joni Arends. (WQCC 03-05)**

23
24 Mr. Mechels requested that the Surface Water Quality Bureau make their presentation on the
25 revised Introduction and Work Element 11 (Public Participation Program) of the New Mexico
26 Statewide Water Quality Management Plan before he would be requesting a hearing.

27
28 **ACTION: Commissioner Sloane moved to have a presentation of the introduction and**
29 **Work Element 11 today, which will start a 30-day comment period, and at**
30 **the next meeting the Commission will either adopt or do whatever is**
31 **necessary to put this into the Water Quality Management Plan.**
32 **Commissioner Brandvold seconded.**

33
34 **After discussion Commission Sloane withdrew his motion and Commissioner**
35 **Brandvold withdrew her second.**

36
37 **ACTION: Commissioner Sloane moved to table item #9. Commissioner Maitland**
38 **seconded. Motion carried unanimously.**

39
40 **Item #10 Previously Item #9**
41 **Presentation and possible action on the revised Introduction and Work**
42 **Element 11 (Public Participation Program) of the New Mexico Statewide**
43 **Water Quality Management Plan.**

44
45 Dr. Davis, Chief of the Surface Water Quality Bureau, introduced Ms. Stephanie Stringer to the
46 Commission. Ms. Stringer gave a presentation on the revised Introduction and Work Element 11

1 (Public Participation Program) of the New Mexico Statewide Water Quality Management Plan,
2 which covered the following:

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

10
11 Ms. Stringer stated that the Surface Water Quality Bureau is requesting the Water Quality
12 Control Commission adopt the proposed revision to the Water Quality Management Plan
13 Introduction and Work Element 11 with comments incorporated.

14
15 At this time Ms. Joni Arends announced that she would like to withdraw her motion for hearing.

16
17 After discussion of this matter, the following action was taken:

18
19 **ACTION: Commissioner Johnson moved to take item #9 off the table. Commissioner**
20 **Olson seconded. Motion carried unanimously.**

21
22 **Item #9 Previously Item #10**
23 **Setting for hearing on the Proposed Revisions to the Statewide Water**
24 **Quality Management Plan, Introduction & Work Element 11. Requested by**
25 **Chris Mechels & Joni Arends. (WQCC 03-05)**

26
27 Ms. Joni Arends of CCNS again announced that she would like to withdraw her motion for
28 hearing.

29
30 After discussion between Mr. Mechels, Mr. Ames and the Commission, the following actions
31 were taken.

32
33 **ACTION: Commissioner Johnson moved to deny the request for a hearing on the**
34 **Proposed Revisions to the Statewide Water Quality Management Plan,**
35 **Introduction & Work Element 11. Commissioner Maitland seconded.**
36 **Motion carried unanimously.**

37
38 **ACTION: Commissioner Glass moved to remove agenda item 10 from the table.**
39 **Commissioner Johnson seconded. Motion carried unanimously.**
40 **(Editor's note: Due to re-numbering of agenda items. There was confusion**
41 **whether items #9 and #10 were taken off the table.**

1 **ACTION:** **Commissioner Glass moved that the Commission defer decision on the**
2 **Introduction and Work Element 11 Statewide Quality Management Plan**
3 **until the regularly scheduled May meeting during which time the interested**
4 **parties may provide comment only on the amendments incorporated by the**
5 **Environment Department in response to their original comments.**
6 **Commissioner Brandvold seconded.**
7

8 Following discussion,

9
10 **Commissioner Glass withdrew his motion. Commissioner Brandvold**
11 **withdrew her second.**
12

13 **ACTION:** **Commissioner Johnson moved to table agenda item #10 until the May**
14 **regularly scheduled meeting. Commissioner Maitland seconded. Motion**
15 **carried unanimously.**
16

17 **Item #11** **Executive Session pursuant to NMSA 1978, Section 10-15-1(H)(7) to discuss**
18 **Regents of the University of California v. New Mexico Water Quality Control**
19 **Commission.**
20

21 **ACTION:** **Commissioner Olson moved to go into Executive Session pursuant to NMSA**
22 **1978, Section 10-15-1 (H)(7) to discuss Regents of the University of California**
23 **v. New Mexico Water Quality Control Commission. Commissioner Glass**
24 **seconded. A roll call vote was conducted and the results are as follows:**
25

26	Commissioner Vigil	Yes
27	Commissioner Goad	Yes
28	Commissioner Brandvold	Yes
29	Commissioner Sloane	Yes
30	Commissioner Maitland	Yes
31	Commissioner Glass	Yes
32	Commissioner Johnson	Yes
33	Commissioner Olson	Yes
34	Commissioner Murray	Yes
35	Commissioner Curry	No

36
37 **Motion carried with 1 no vote by Commissioner Curry.**
38

39 **ACTION:** **Commissioner Brandvold moved to come out of Executive Session.**
40 **Commissioner Glass seconded. A roll call vote was conducted and the results**
41 **are as follows:**
42

43	Commissioner Vigil	Yes
44	Commissioner Goad	Yes
45	Commissioner Brandvold	Yes
46	Commissioner Sloane	Yes
47	Commissioner Maitland	Yes

1 **Commissioner Glass Yes**
2 **Commissioner Johnson Yes**
3 **Commissioner Olson Yes**
4 **Commissioner Murray Yes**
5 **Commissioner Curry Yes**

6
7 **Motion carried unanimously.**

8
9 Commissioner Johnson stated the matter discussed in closed session was only that matter
10 specified in the motion.

11
12 **ACTION: Commissioner Olson moved to reject the offer presented by LANL Counsel.**
13 **Commissioner Sloane seconded. Motion carried unanimously.**

14
15 **Item #12 Other business**

16
17 Commissioner Brandvold requested that the Commission draft a letter to the 4 Commission
18 members who left the Commission in December expressing our appreciation for their hard work
19 and helping the Commission to conduct business.

20
21 Commissioner Olson questioned the status of the Casey Luna Appeal. Mr. Shandler informed
22 the Commission that the Casey Luna Appeal was turned into an Informal Appeal.

23
24 **Item #13 Next meeting**

25
26 The next meeting of the Water Quality Control Commission will be May 13-14, 2003 in Santa
27 Fe, New Mexico.

28
29 **ACTION: Commissioner Sloane moved to adjourn. Commissioner Maitland seconded.**
30 **Motion carried unanimously.**

31
32
33
34
35
36
37
38
39
40
41
42
43 
43 _____
43 **Ron Curry, WQCC Chair**