

**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION**

1190 St. Francis Drive, Room N2150

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Santa Fe, New Mexico 87502

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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

August 11-12, 2008

9:00 a.m.

NM Energy, Minerals and Natural Resources Department

Wendell Chino Building, Porter Hall

1220 South St. Francis Drive

Santa Fe, New Mexico 87505

MEMBERS PRESENT:

Jon Goldstein
Cheryl Bada
Greg Lewis
Larry Dominguez
*Len Flowers
Peggy Johnson
Steve Glass
Howard Hutchinson
Mike Sloane
Glenn Von Gonten
Maxine Goad
Edward Vigil
Jim Norton

NMED/Deputy Secretary
State Parks Division
Office of the State Engineer
Department of Agriculture
Department of Health
Bureau of Geology and Mineral Resources
City of Albuquerque – Municipal/County Representative
Soil and Water Conservation Commission
Department of Game & Fish
Oil Conservation Division
Member-at-Large
Member-at-Large
NMED/EPD, sat in lieu of Jon Goldstein (who had to leave the meeting at 10:40 a.m.) and acted as NMED's representative for Agenda Item 9 deliberations

MEMBERS ABSENT:

*Ms. Flowers was present on August 11 for agenda items 1-8, 10 and 11 and was absent for agenda item 9, the Phelps Dodge Tyrone deliberations.

OTHERS PRESENT:

Jolene L. McCaleb
Glenn Saums, NMED/SWQB
Pam Homer, NMED/SWQB
Gil Gonzales, LANL
Miguel de la Cruz
Mike Coffman, NMED
Bill Olson, NMED/GWB
Jay Lazarus, Glorieta GeoSciences
Dennis Fernandez
Dale Doremus, NMED/SWQB
Cathie R. Eisen
Susan Kerry, Esq. Sheehan Law Firm
Yvette Paroz
Eric Hall
Joyce Medina, NMED

Richard Graham, EHD Supply
Heidi Hendersen, NMED/SWQB
Deborah Sarabia, NMED/SWQB
Stephanie Stringer, NMED/SWQB
Rachel Conn, Amigos Bravos
Charles Nylander, Watermatters, LLC
Sally Malave, Asst. Atty. General
David Probst, NMDGF
Felicia Orth, NMED
William Harrelson
Darcie B. Weingrad, Gallagher & Kennedy
Lynette Guevara, NMED/SWQB
Richard Dale Graham
Marcy Leavitt, NMED

The meeting was called to order by Mr. Goldstein at 9:05 a.m.

Item 1. Roll Call:

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

Item 2. Approval of Agenda

It was suggested that Item 9 be moved to follow the adjournment of the public meeting, Item 12 on the agenda.

Action: Mr. Sloane moved to approve the agenda as amended. Mr. Glass seconded. The motion passed unanimously.

Item 3. Approval of July 7-8, 2008 meeting minutes.

The following revisions were made in the minutes: The addition of Mr. de Saillan at Line 162 and the removal of Ms. Malave in that same line; the addition of the following language at Line 181, "... During the discussion Ms. Goad declined to recuse herself from the deliberations and pledged to avoid expressing opinions based on personal experience. Rather, Ms. Goad pledged to limit her discussions and make all decisions based on the record made during the hearing." Line 257 was revised to read "The Hearing Officer adjourned the public meeting and went into executive session at 10:50 a.m."

Action: Mr. Glass moved to approve the minutes as revised. Mr. Dominguez seconded. Mr. Goldstein abstained. The motion passed.

Item 4. Request for Public Comment and Public Hearing on Integrated Clean Water Act §303(d)/§305(b), possible appearance by Rebecca Perry-Piper.

Ms. Perry-Piper was not at the meeting. Correspondence addressed to the Commission by Ms. Perry-Piper was distributed in hard copy at the meeting; that correspondence was emailed to the Commission on August 7, 2008.

The Chair asked if the Department had a response to Ms. Perry-Piper's request. Ms. Fox stated that the bureau had provided Ms. Perry-Piper with a response and also stated the Department's objections to the Commission granting Mr. Perry-Piper's request.

A discussion ensued regarding the Department's efforts with respect to obtaining public comment on the integrated report and the relevance of public comment on the contents of the report. Ms. Guevara noted that she had corresponded with Ms. Perry-Piper several times relating to her requests and the integrated report.

Mr. Hutchinson mentioned his negative perceptions of the integrated report, which he attributed to EPA's shortcomings, with respect to "probable sources." Ms. Guevara stated that she has repeatedly discussed with EPA staff the need for better guidance with respect to the reports. It was agreed that since the document is a report produced by the Department public comment relating to its contents was not relevant.

Action: Mr. Hutchinson moved that the Commission deny the request for a public hearing on the integrated report. Mr. Lewis seconded. The motion passed unanimously.

Item 5. Final review and approval of the State of New Mexico 2008-2110 Integrated Clean Water Act §303 (d)/§305(b) Report and List of Assessed Surface Waters. Lynette Guevara NMED/SWQB.

Ms. Guevara reviewed the entire 2008-2110 report at length for the Commission.

Rachel Conn, representing Amigos Bravos, noted her organization's specific concerns with the accuracy of certain portions of the report.

Jay Lazarus of Glorieta Geo-Sciences, representing Dairy Producers of New Mexico, stated concerns the Dairy Producers had with the report.

Ms. Guevara responded to the concerns expressed by Ms. Conn and Mr. Lazarus.

A lengthy discussion of the report and its impact was conducted by the Commission.

Action: Mr. Glass moved that the Commission approve the Integrated Clean Water Act §303 (d)/§305(b) Report and List of Assessed Surface Waters with the revision of the Rio Pueblo de Taos Integrated Reporting Category be changed from 5/5B to 5/5A on the Integrated List. Mr. Sloane seconded.

There was a brief discussion relating to the publication of public notices. The Commission agreed that

where possible, notices should be published locally as well as in papers considered to be of general circulation.

Roll Call Vote:

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|-----------------------|------------|
| Mr. Sloane | yes |
| Mr. Vigil | yes |
| Ms. Goad | yes |
| Mr. Dominguez | yes |
| Mr. Lewis | yes |
| Ms. Bada | yes |
| Mr. Goldstein | yes |
| Mr. Von Gonten | yes |
| Mr. Glass | yes |
| Mr. Hutchinson | yes |
| Ms. Johnson | yes |
| Ms. Flowers | yes |

The motion passed unanimously.

Item 6. Initiation of Surface Water Quality Standards Triennial Review and Availability of Public Discussion Draft of Proposed Revisions. Pam Homer, NMED/SWQB.

Ms. Homer noted that today's presentation before the Commission is the formal initiation of the triennial review process. She went on to present an overview of the review process segments as well as the various steps involved in bringing the review to conclusion. Additionally, she noted several sections that are proposed by the Department for revision.

There was a brief Commission discussion regarding the review and its ramifications.

Item 7. Appointment by the Commission of four positions on the Utility Operators Certification Board: three regular positions and one alternate position. Mike Coffman, NMED.

Mr. Coffman introduced Dennis Fernandez and Richard D. Graham who joined the Commission in the election of the Utility Operators Certification Board members. He then introduced Miguel de la Cruz, Eric Hall, William Harrelson, Jr., the prospective regular Board members, and Kathy Eisen, alternate Board member.

Mr. Glass noted that these prospective members were very exceptionally well qualified and complimented them for their willingness to participate as Board members. Several other Commissioners made similar comments.

Action: Mr. Lewis moved that the Commission approve the appointment of Mr. de la Cruz, Mr. Hall and Mr. Harrelson as Utility Board

members and Ms. Eisen as the alternate. Mr. Glass seconded. The motion passed unanimously.

Item 8. Deliberations in re: WQCC 08-01 (PIS) Dept. of Game and Fish Petition for Deployment of piscicides for the restoration of Gila Trout and Other Native Fishes to the West Fork Gila River Watershed Including Tributaries Within Gila National Forest, Catron County, New Mexico. Hearing Officer: Felicia Orth

Ms. Orth stated that the hearing in this matter had been conducted May 28, 2008 in Santa Clara, NM at the National Guard Amory. She also mentioned that the purpose of the hearing had been to allow the Department of Game and Fish (DG&F) to use a different piscicide than that which had been authorized at the conclusion of an earlier hearing (WQCC 01-10). The prior piscicide was defective and its application did not produce the anticipated result. She further noted that the only notice of intent to present technical testimony was filed by the DG&F, that three individuals had filed public comment statements, Ann McCampbell, Nancy Gordon and M.H. (Dutch) Salmon, and that the hearing had lasted approximately two and one-half hours.

There was Commission discussion regarding the geographic area to be impacted by the piscicide application as well as a very lengthy discussion regarding a broad spectrum of issues involved in applying piscicides.

Action: Mr. Sloane moved that the Commission adopt the Hearing Officer's Report, the Proposed Findings of Fact and Conclusions of Law and Order approving the use of piscicides in WQCC 08-01 (PIS). Mr. Norton seconded.

After a lengthy discussion, the Commission agreed that the text on Page 3, Paragraph 10 of the Findings and Conclusions should be amended to read "The Department proposes the use of a piscicide in the Upper West Fork Gila River Watershed to restore and maintain the physical and biological integrity of the surface waters of the State of New Mexico, including restoration of the native Gila trout." Additionally, there were clerical errors noted in the Findings and Conclusions and in the draft Order. It was agreed the language change would be made and the clerical errors would be corrected in Ms. Orth's Order approving the use of piscicides.

Mr. Sloane accepted the amendments as set out by the Commission members. Mr. Norton seconded.

Roll Call:

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|-----------------------|------------|
| Mr. Lewis | yes |
| Mr. Von Gonten | yes |
| Ms. Bada | yes |
| Mr. Norton | yes |
| Mr. Dominguez | yes |
| Mr. Sloane | yes |
| Mr. Hutchinson | no |

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|--------------------|------------|
| Ms. Johnson | yes |
| Ms. Flowers | no |
| Ms. Goad | yes |
| Mr. Vigil | yes |
| Mr. Glass | yes |

Mr. Hutchinson explained his vote noting that he had not been persuaded that the application of piscicides was the correct course of action under any circumstances.

Ms. Flowers stated that she also felt that the deliberate poisoning of New Mexico water bodies was not an environmentally sound practice.


Ms. Orth concluded by presenting the Commission with, in her capacity as Hearing Officer in the case, a status report on the Parasol Dairy case, WQCC 08-05 (A).

Item 10. Other business

None.

Item 11. Next meeting September 8-9, 2008 – Location: Energy, Minerals and Natural Resources Dept., Chino Bldg., Porter Hall, 1220 South St. Francis Drive, Santa Fe, NM 87505.

Item 12. Adjournment: Mr. Glass adjourned the public meeting at 11:40 a.m., recessing for lunch and announcing the resumption of executive session deliberations in the Phelps Dodge Tyrone matter (Agenda Item 9) in closed session at 1:00 p.m.



Steve Glass, Acting Chair
Water Quality Control Commission