



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

APPROVED

Minutes of the
New Mexico Water Quality Control Commission Meeting
April 9, 2002

The New Mexico Water Quality Control Commission (WQCC) meeting was held on April 9, 2002, at the State Capitol Building in Santa Fe, New Mexico.

MEMBERS PRESENT:

- Greg Lewis For Chairman Peter Maggiore, New Mexico Environment Department
Pat Turney Office of State Engineer
Julie Maitland Department of Agriculture
Howard Hutchinson Soil and Water Conservation Commission
Bill Olson Oil Conservation Division
Steve Glass City of Albuquerque - Municipal/County Representative
Lynn Brandvold Bureau of Geology and Mineral Resources
Dave Gatterman State Parks
Dr. Conrad Keyes Member-at-Large

MEMBERS ABSENT

- Jack Westman Member-at-Large
Irene Lee Member-at-Large
Larry Bell Department of Game & Fish

OTHERS PRESENT:

- Felicia Orth Acting WQCC Administrator, NMED Hearing Officer
Carolyn Vigil NMED Hearing Clerk
Zachary Shandler Commission Counsel, Attorney General's Office
Jim Davis NMED/SWQB

1 Glenn Saums NMED/SWQB  
2 David Hogge NMED/SWQB  
3 Lynette Stevens NMED/SWQB  
4 Stephanie Stringer NMED/SWQB  
5 John Montgomery NMED/SWQB  
6 Marcy Leavitt NMED/GWB  
7 Gary King NMED/SWQB  
8 Paul Ritzma NMED/OGC  
9 Scott Cameron Forest Guardians  
10 Harvey Seto Molycorp, Inc.  
11 Mike Saladen LANL  
12 Janet Gerwin Pajarito Water Committee  
13 Chris Mechels  
14 Callie Gnatkowski  
15 Andrea Kelton  
16 Joni Arends CCNS  
17 B.J. Brock

18  
19 **Item #1: Roll Call**

20  
21 Felicia Orth, Acting WQCC Administrator, took roll. A quorum was present.  
22

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

24  
25 Commissioner Olson requested that item 5 be moved to become Item 9.  
26

27 Commissioner Hutchinson moved to approve the agenda as amended. Commissioner Brandvold  
28 seconded the motion. The motion passed unanimously.  
29

30 **Item #3 Approval of the minutes of the March 12-14, 2002 meeting.**

31  
32 After discussion and amendments, Commissioner Keyes moved to approve the minutes as  
33 amended. Commissioner Glass seconded the motion. The motion passed unanimously.  
34

35 **Item #4 Discussion and setting of hearing on petition from New Mexico Game and Fish**  
36 **Department to use Antimycin A to renovate portions of Animas Creek and Cave Creek, a**  
37 **perennial tributary to Animas Creek in Sierra County**  
38

39 Mr. Shandler stated that the Commissioners had copies in their packets of a memorandum from  
40 Dr. Davis dated March 22, 2002 that the petition from the Game and Fish Department met all  
41 requirements. Mr. Shandler recommended that the Commission name a hearing officer in this  
42 matter, give the hearing officer 90 days to set the hearing and return with a recommendation, and  
43 set the location for the hearing.  
44

45 Mr. Shandler then referred the Commissioners to the Commission Standards, specifically  
46 Subparagraph F, Toxic Pollutants. Mr. Shandler read the rule to the Commissioners and asked

1 the Commissioners for their guidance to the hearing officer in these matters. He is raising this  
2 because the last couple of hearings on these petitions have gone 12 ½ hours and the Commission  
3 needs to balance public comments with reaching a point of diminishing returns. In recent  
4 hearings a lot of time has been taken debating the documentation of EPA registration of the  
5 piscicide under FIFRA and the evaluation of available alternatives. What information should the  
6 hearing officer be gathering?  
7

8 Commissioner Maitland noted that she feels the hearing is not an appropriate forum for debate  
9 about whether EPA should have registered the piscicides. Documentation establishing the  
10 registration is sufficient. The other Commissioners agreed with this statement.  
11

12 Commissioner Brandvold stated that as to available alternatives, testimony should be taken, but  
13 only if there is new information; the same ground should not be re-plowed.  
14

15 Commissioner Hutchinson stated that discussion of available alternatives is generally appropriate  
16 because we are dealing with different types of streams; site-specific considerations are relevant.  
17

18 Commissioner Olson moved to set the matter for hearing with the NMED hearing officer, that a  
19 hearing date be set by the hearing officer, and that the hearing be held in Truth or Consequences.  
20 Commissioner Brandvold seconded the motion. The motion passed unanimously.  
21

22 **ITEM #5 (formerly Item #6) START OF THE 60-Day PUBLIC COMMENT PERIOD**  
23 **FOR DRAFT TMDLS ON: RED RIVER (CHRONIC ALUMINUM), BITTER CREEK**  
24 **(ACUTE ALUMINUM, STREAM BOTTOM DEPOSITS), PIONEER CREEK**  
25 **(TURBIDITY), PLACER CREEK (ACUTE ALUMINUM) AND CABRESTO CREEK**  
26 **(CHRONIC ALUMINUM). START OF THE 60-DAY PUBLIC COMMENT PERIOD**  
27 **FOR 303 (D) LISTING UPDATE FOR THE RED RIVER WATERSHED.**  
28

29 David Hogge, Program Manager of the Total Maximum Daily Load (TMDL) Development  
30 Section, appeared to discuss the start of the 60-day public comment period for the Red River  
31 Watershed TMDLs. These are the first TMDLs they have contracted out at the Bureau level.  
32 Daniel B. Stevens was the contractor. The Commissioners' packets contain the PowerPoint  
33 presentation and information about the relevant website.  
34

35 The draft TMDLs opened today include the main stem of the Red River for chronic aluminum,  
36 Bitter Creek for acute aluminum and stream bottom deposits, Pioneer Creek for turbidity, Placer  
37 Creek for acute aluminum and Cabresto Creek for chronic aluminum. The two 303 (d) listing  
38 letters opened today are Pioneer Creek for stream bottom deposits and Placer Creek for stream  
39 bottom deposits. The public participation process and comment period starts today and ends  
40 June 10, 2002. The TMDLs are available at today's Commission meeting; notices will be mailed  
41 to the Water Quality Control Commission mailing list, the Non-point Source Taskforce mailing  
42 list, and the Acequia Association mailing list. Notice will also be e-mailed today to  
43 approximately 100 addresses on the Bureau's e-mail list, and will be posted on the New Mexico  
44 Environment Department website. The Surface Water Quality Bureau staff will be working with  
45 local residents and the press for additional notification. Mr. Hogge also gave the schedule of  
46 public meeting planned in Questa.

1  
2 Commissioner Hutchinson moved to open the public comment period for the Red River  
3 Watershed TMDLs. Commissioner Keyes seconded the motion. The motion passed  
4 unanimously.

5  
6 **ITEM #6 (formerly Item #7) PRESENTATION BY NEW MEXICO ENVIRONMENT**  
7 **DEPARTMENT SURFACE WATER QUALITY BUREAU ON DRAFT STATEWIDE**  
8 **WATER QUALITY MANAGEMENT PLAN REVISIONS INCLUDING AN UPDATE**  
9 **ON PUBLIC PARTICIPATION PROCESS.**

10  
11 Dr. Davis, Chief of the Surface Water Quality Bureau, appeared to brief the Commission on the  
12 Draft Statewide Water Quality Management Plan as it currently stands and provide an update on  
13 the public participation process that the Bureau has been undertaking for the last couple of  
14 months. The Bureau has discussed the need to update this Plan for the last 3 ½ years. Elements  
15 of the Plan have not been updated since 1978.

16  
17 Dr. Davis then made a PowerPoint presentation which included background, the current Plan, the  
18 requirements found in the Code of Federal Regulations, the strategy they followed, the contents  
19 of the updated Plan and the process for updating it. A copy of the slide presentation was  
20 included in the Commissioners' packets.

21  
22 Dr. Davis stated in response to Commission questioning that written comments received on the  
23 Plan would be appended to the Plan, with responses to each comment appended as well, noting  
24 that the Bureau had made or had not made a change in the Plan as a result of the comment.

25  
26 Mr. Saums stated in response to further Commission questioning that the Plan can be sent to  
27 anyone in hard copy or electronic copy.

28  
29 Chairman Lewis opened the floor to questions and statements from the audience.

30  
31 Mr. Mechels stated that he was confused about how to request a public hearing on the document,  
32 and that he wished to request one, but it appeared the time to request a hearing was passed. He  
33 had submitted written comment on the Plan, but did not know he had to request a hearing in that  
34 comment. He considers the Bureau's approach to be inconsistent with the approach used in other  
35 states, which does a better job of informing and involving the public. He considers it to be  
36 inadequate and confusing, and an example of rote compliance. He included these opinions in his  
37 written comment to the Bureau.

38  
39 Commissioner Hutchinson asked whether there would be an opportunity for people to give  
40 testimony at the following meeting when the Plan would be considered for adoption.

41  
42 Mr. Shandler stated that he needs to get all the facts and do some research before he can give the  
43 Commission the answer to Commissioner Hutchinson's question.

1 Commissioner Olson stated that in his experience the Commission provides a forum sufficiently  
2 informal that the public can participate in its meetings and make a difference in its decision-  
3 making.

4  
5 Commissioner Keyes stated that he had asked earlier about the comments made on the Plan  
6 because he wanted to be sure the Commissioners had a chance to review and consider them prior  
7 to adopting the Plan.

8 Dr. Davis read from the public notice that section pertaining to the manner in which someone  
9 would request a public hearing.

10  
11 Commissioner Hutchinson asked whether the written comment received would constitute a  
12 request for public hearing.

13  
14 Mr. Shandler stated that he would need some time in which to consider and research the answer.

15  
16 Mr. Davis referred the Commissioners to the planning process section of the document relating  
17 to public notice, public meetings, a public hearing, and the Commission's determination of  
18 significant public interest.

19  
20 Following a break, Mr. Shandler advised the Commission that it appears there is no institutional  
21 history on whether a particular type of hearing is held in these matters. He referred the  
22 Commission to the language in the Plan Dr. Davis had read, which contains certain requirements  
23 for Plan update adoption. The presentation of the Plan update to the Commission had happened  
24 today. Formal public notice had also happened. More than 30 days had been given for public  
25 comment and requests for public hearing; 60 days had been given. Although Mr. Shandler stated  
26 that notice had been given of the opportunity to request a public hearing, the more prudent  
27 advice was to acknowledge that the notice was ambiguous. He advised the Commission to  
28 consider whether there was a written request for hearing and whether there was significant public  
29 interest. He agrees with Dr. Davis that there is not in the record a written request for hearing.  
30 Does the Commission accept a request made today for a hearing? Notice must be given at least  
31 45 days prior to any hearing. It would be reasonable for the Commission to publish another  
32 notice and extend the time in which people can request a hearing.

33  
34 Commissioner Olson asked when the clock started running for requesting a hearing?

35  
36 Mr. Shandler responded that the notice is ambiguous. Ideally, the notice would have stated that  
37 if you want to request a hearing it must be received by a certain date.

38  
39 Commissioner Hutchinson stated that a better option is to allow people to request a hearing after  
40 they see whether their comments have been taken into account in the updated Plan.

41  
42 Commissioners Maitland and Brandvold agreed, and wanted dates certain in the future, to avoid  
43 a helter-skelter process.

44  
45 Commissioner Keyes agreed as well, and stated he believes the clock should start after the  
46 updated Plan is released and people see what came of their comments.

1 Dr. Davis stated that they could have the Plan updated for presentation at the June meeting; the  
2 30 days would start from then for interested parties and the Commission to review the document  
3 and for interested parties to have the opportunity to request a hearing. Dr. Davis agreed with  
4 Commissioner Keyes that the Commission could decide to have a hearing regardless of whether  
5 requests for hearing were received.  
6

7 Mr. Shandler stated that he was advising the Commission to follow the strategy laid out by Dr.  
8 Davis.  
9

10 Commissioner Olson stated that he wanted to be careful in setting a hearing so as not to add  
11 unnecessarily to the expense of the deliberations. It may be that deliberating at a regular meeting  
12 would provide an opportunity for people to participate without adding the costs of transcription  
13 and other hearing costs.  
14

15 Commissioners Brandvold, Olson, Lewis were careful to note that they were not extending the  
16 time for written public comment, but rather extending the time in which a request for hearing  
17 might be submitted.  
18

19 Commissioner Olson noted that the matter was effectively being deferred until the June meeting.  
20

21 **ITEM #7 (formerly Item # 8) DISCUSSION AND POSSIBLE SETTING OF HEARING**  
22 **ON OPEN MEETINGS RESOLUTION**  
23

24 Mr. Shandler noted that the advice from the Attorney General's Office was that the Commission  
25 adopt its Open Meetings Resolution as part of a formal rulemaking, with notice and public  
26 comment. This Commission receives a lot of public comment and scrutiny.  
27

28 Ms. Orth noted that a discussion in an earlier meeting of the provision relating to participation by  
29 telephone had also prompted a suggestion to adopt the resolution as a rule.  
30

31 Commissioner Glass moved to set this matter for a rulemaking hearing and provide the required  
32 notice. Commissioner Maitland seconded the motion. Commissioner Hutchinson proposed a  
33 friendly amendment to the motion that the Commission Chair would hear the matter and that  
34 informal transcription be provided. The proposed amendment was accepted. The motion passed  
35 unanimously.  
36

37 **ITEM #8 (formerly #11) Executive Session pursuant to NMSA 1978, Section 10-15-1 (H)(7),**  
38 **to discuss Defenders of Wildlife and Forest Guardians vs. United States Environmental**  
39 **Protection Agency.**  
40

41 Commissioner Keyes moved that the Commission go into executive session pursuant to NMSA  
42 1978, Section 10-15-1 (H)(7), to discuss Defenders of Wildlife and Forest Guardians vs. United  
43 States Environmental Protection Agency. Commissioner Olson seconded the motion. A roll call  
44 vote was taken:  
45  
46

- 1 **Chairman Lewis** yes
- 2 **Commissioner Hutchinson** yes
- 3 **Commissioner Turney** yes
- 4 **Commissioner Olson** yes
- 5 **Commissioner Maitland** yes
- 6 **Commissioner Glass** yes
- 7 **Commissioner Gatterman** yes
- 8 **Commissioner Keyes** yes
- 9 **Commissioner Brandvold** yes

10  
11 Commissioner Maitland moved that the Commission come out of executive session.  
12 Commissioner Keyes seconded the motion. A roll call vote was taken:

- 13
- 14 **Chairman Lewis** yes
- 15 **Commissioner Hutchinson** yes
- 16 **Commissioner Turney** yes
- 17 **Commissioner Olson** yes
- 18 **Commissioner Maitland** yes
- 19 **Commissioner Glass** yes
- 20 **Commissioner Gatterman** yes
- 21 **Commissioner Keyes** yes
- 22 **Commissioner Brandvold** yes

23  
24 Chairman Lewis noted that no action was taken during executive session and that the only issue  
25 discussed was Defenders of Wildlife and Forest Guardians vs. United States Environmental  
26 Protection Agency.

27  
28 **ITEM #9 (formerly #5) FORMAL APPROVAL AND ADOPTION OF THE STATE'S**  
29 **305(b) REPORT ON NEW MEXICO WATER QUALITY TO CONGRESS.**

30  
31 Dr. Davis made a PowerPoint presentation. Section 305(b) of the Clean Water Act (CWA)  
32 requires states and other jurisdictions to submit biennial water quality reports to the U.S.  
33 Environmental Protection Agency (EPA) describing the extent to which waters are attaining  
34 applicable water standards. Under Section 303(d) of the CWA, states identify waters that are not  
35 attaining standards, submit the list to EPA, and develop TMDLs for them. The 2002 EPA  
36 Guidelines for Integrated Water Quality Monitoring and Assessment Report integrate 305(b) and  
37 303(d) data into one document.

38  
39 Dr. Davis described the integrated document, and the timeline for recent and future changes to  
40 the 305 (b) report and 303 (d) list. A disclaimer will be added to every assessment unit entry in  
41 Appendix B of the 305 (b) report: "Attainment status is verified for sampled parameters only."  
42 Dr. Davis also showed sample entries for the reports.

43  
44  
45  
46

1 Commissioner Glass moved to reinstate some language from the original draft of the Executive  
2 Summary regarding arsenic matters. Commissioner Brandvold seconded the motion. The  
3 motion passed 8-1. Chairman Lewis voted in the negative. Several Commissioners made note  
4 of typographical errors.

5  
6 Dr. Davis introduced Lynette Stephens and noted that she has been the lead person for the  
7 Access Database changes to the 305 (b) Report and the 303 (d) list. He introduced Mr. Gary  
8 King to assist with the discussion of the narrative.

9  
10 After review, discussion and amendment, Commissioner Keyes moved to adopt the report as  
11 amended. Commissioner Brandvold seconded the motion. The motion passed unanimously.

12  
13 The finalized report will be available on the Bureau's webpage [www.nmenv.state.nm.us/swqb]  
14 by October 1, 2002.

15  
16 **ITEM #10 (formerly Item #9) OTHER BUSINESS**

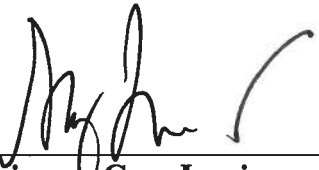
17  
18 The Commissioners had no other business.

19  
20 **ITEM #11 (formerly #10) NEXT MEETING**

21  
22 The next meeting will be held in Santa Fe on May 14, 2002.

23  
24 **ADJOURNMENT**

25  
26 Commissioner Olson moved to adjourn the meeting. Commissioner Brandvold seconded the  
27 motion. The motion passed unanimously.

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38   
Chairman Greg Lewis