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

MEMBERS PRESENT:

Greg Lewis Chairman, 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
Larry Bell Department of Game and Fish
David Johnson State Parks Division
Dr. Conrad Keyes Member-at-Large
Irene Lee Member-at-Large
Charles M. Easterling Member-at-Large

OTHERS PRESENT:

Zack Schandler, WQCC Counsel
Geraldine Madrid-Chavez, WQCC Administrator
Dr. Jim Davis, SWQB
Eric Ames, NMED Counsel
Lynette Stevens
Kit Roush
Mundo Gutierrez
Glenn Saums

John Mantis
Jim Brooks
David M. Vackar
Mike Saladen
Leo Wilson
Cindy Huntsman
John Montgomery
J. Brent Moore

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

minutes of WQCC meeting 07/09/02
Chairman Lewis called the meeting of the WQCC to order at 9:00 am.

**Item #1: Roll Call**

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

Chairman Lewis introduced and welcomed Commissioner Charles M. Easterling.

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

Commissioner Brandvold requested removing the approval of the April 9, 2002 minutes from the agenda and moving item #9 behind item #6 making it item #7.

**ACTION:** Commissioner Johnson made a motion to approve the agenda as amended. Commissioner Keyes seconded. Motion passed unanimously.

**Item #3: Approval of the May 14, 2002 minutes.**

After discussion and amendments, Commissioner Olson moved to approve the minutes as amended. Commissioner Keyes seconded the motion. The motion passed unanimously.

**Item #4: Adoption of Statement of Reasons for Amendments to Sections, 20.6.4.10, 20.6.4.11, 20.6.4.12, 20.6.4.113 and 20.4.4.900 NMAC. (WQCC 01-18R).**

Mr. Shandler, Counsel for the Commission, presented to the Commissioners the Order and Statement of Reasons for Amendment of Regulations with the new language. There was a significant discussion on the definition of a "grab sample".

**ACTION:** Commissioner Keyes moved to table the Order and Statement of Reasons for Amendment of Regulations until the relationship with the Water Quality Management Plan is resolved. Commissioner Hutchinson seconded and a roll call was taken. The results were as follows:

- Commissioner Easterling: Yes
- Commissioner Keyes: Yes
- Commissioner Lee: Yes
- Commissioner Brandvold: Yes
- Commissioner Hutchinson: Yes
- Commissioner Maitland: No
- Commissioner Glass: No

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Commissioner Johnson  Yes
Commissioner Olson  No
Ms. Pat Turney  Yes
Chairman Lewis  Yes

The motion passed with an 8 – 3 vote.

Item #5: Start the 30-day public comment period for the draft 2002-2004 State of New Mexico 303(d) list for waterbodies requiring total maximum daily loads (TMDLs)

David Hogge distributed a CD and a handout to the Commissioners with an explanation for changes in the format of the 2002-2004 State of New Mexico 303(d) list. Mr. Hogge noted the following steps have been completed which improves the format of the 2002-2004 303(d) list and moves us towards the goal of integration:

- Populated Access® database through USEPA-developed Assessment Database (ADB) front end.
- Re-defined and delineated Assessment Units (I.E., stream reaches, river reaches, lakes, or reservoirs) based on the National Hydrologic Dataset (NHD) through the use of ArcView.
- Removed and/or re-defined several reaches based on tribal jurisdictions.
- Integrated stream reaches and lakes by 8-digit watershed codes (HUCs) in the 303(d) list.
- Linked cause(s) of impairment with impaired designated use(s) in the database.
- Generated 303(d) list from Access® database using Report function, organized alphabetically within HUC watershed number.

Item #6: Discussion – EPA’s Draft Biological Assessment – Section 7 Consultation

Commissioner Hutchinson explained the issues concerning the Draft Biological Assessment and Section 7 Consultation on the standards to the full Commission.

ACTION: Commission Johnson made a motion to table the discussion of the EPA’s Draft Biological Assessment – Section 7 Consultation until returning from executive session. Commissioner Hutchinson seconded. Motion passed unanimously.

At this time Chairman Lewis welcomed Ms. Cindy Huntsman and Mr. Raymundo Gutierrez of the Utility Operators Certification Advisory Board to sit with the Commissioners for discussion of item #7.

Item #7: (was originally Item #9) The Utility Operators Certification Advisory Board requests that the New Mexico Water Quality Control Commission make appointments to fill three regular Board positions and one alternate position, which are currently vacant.
Dr. Jim Davis introduced Mike Coffman, Executive Secretary, NM Utility Operators Certification Advisory Board to the Commission.

Mike Coffman requested approval from the New Mexico Water Quality Control Commission to make appointments to fill three regular Board positions and one alternate position. Mr. Coffman noted that the appointments are for the terms, which will begin July 1, 2002 and end June 30, 2005.

Mr. Coffman stated that after reviewing the candidates qualification and statements, the Board voted on June 4, 2002, to recommend the following operators to the Commission for appointment to the Board as regular members: Leo Wilson, Kit Roush, and Ken Mosley. The Board recommends appointment of Richard Nevarez to the alternate position.

**ACTION:** Commissioner Brandvold moved to approve Leo Wilson, Kit Roush and Ken Mosley as new board members and Richard Nevarez as the alternate. Commissioner Keyes seconded. Motion passed unanimously.

**Item #8:** (was originally Item #7) Other Business

Commissioner Keyes requested copies of the March 12, 2002 and the April 9, 2002 minutes.

Dr. Jim Davis informed the Commission on the following issues:

- The Surface Water Quality Bureau (SWQB) sent a letter to EPA on May 10th seeking clarification for the timing of the initiation of the next tri-annual review of the Surface Water Quality Standards. The SWQB received 2 letters from the EPA stating they have received the letter from SWQB and will be in contact with them.

- Update on the HB 388 and the actions the Department has taken are as follows:
  - Engaged in a dialog with the U.S. Fish & Wildlife Service.
  - The SWQB met with the Office of the State Engineers, Interstate Stream Commission and with the Oil Conservation Division.
  - The SWQB has begun drafting a petition that will be submitted to the Commission that will recommend changes to the Surface Water Quality Standards.

**Item #9** (was originally Item #8) Next Meeting

The next WQCC meeting will be in Santa Fe, NM on August 13, 2002 at 9:00 am.

**Item #10** Executive Session pursuant to NMSA 1978, Section 10-15-1 (H)(1), Utility Operators Certification; Notice of Contemplated Action.

Zack Shandler presented to the Commission two options on how to handle the Utility Operators Certification: Notice of Contemplated Action.
Option #1: The Board could hear today’s presentation from the Environment Department in redacted form then can make a decision on whether to issue an NCA. And would be able to sit and adjudicate the matter.

Option #2: The Board could hear today’s presentation from the Environment Department without redaction then decide whether to issue and NCA if so they would delegate adjudication responsibility to the Environment Department.

ACTION: Commissioner Lee made a motion for Option 1 with a Hearing Officer. Commissioner Hutchinson seconded. At this time Chairman Lewis called for a roll call vote. The results were as follows:

Mr. Gutierrez No
Mr. Huntsman No
Commissioner Easterling Yes
Commissioner Keyes Yes
Commissioner Lee Yes
Commissioner Brandvold Yes
Commissioner Hutchinson Yes
Commissioner Bell No
Commissioner Maitland No
Commissioner Glass Yes
Commissioner Johnson No
Commissioner Olson Yes
Ms. Turney No
Chairman Lewis No

Motion was a 7-7 tie.

ACTION: Commissioner Hutchinson made a motion to reconsider the vote of Option 1 under the provision of a Hearing Officer. Commissioner Easterling seconded. At this time Chairman Lewis called for a roll call vote. The results were as follows:

Mr. Gutierrez No
Ms. Huntsman No
Commissioner Easterling No
Commissioner Keyes Yes
Commissioner Lee Yes
Commissioner Brandvold No
Commissioner Hutchinson Yes
Commissioner Bell No
Commissioner Maitland No
Commissioner Glass No
Commissioner Johnson No
Commissioner Olson Yes
Ms. Turney No
Chairman Lewis No

Motion failed with a 4 – 10 vote.

ACTION: Commission Glass made a motion for Option #2. Commission Easterling seconded. At this time Chairman Lewis called for a roll call vote. The results were as follows:

Mr. Gutierrez Yes
Mr. Huntsman Yes
Commissioner Easterling Yes
Commissioner Keyes No
Commissioner Lee No
Commissioner Brandvold Yes
Commissioner Hutchinson No
Commissioner Bell Yes
Commissioner Maitland Yes
Commissioner Glass Yes
Commissioner Johnson Yes
Commissioner Olson No
Ms. Turney Yes
Chairman Lewis Yes

Motion passed with a 10 – 4 vote.

ACTION: Commission Glass made a motion to go into Closed Executive Session pursuant to NMSA 1978, Section 10-15-1 (H)(1), Utility Operators Certification: to consider Notice of Contemplated Action. Commissioner Maitland seconded and a roll call vote was taken. The results were as follows:

Mr. Gutierrez Yes
Mr. Huntsman Yes
Commissioner Easterling Yes
Commissioner Keyes No
Commissioner Lee Yes
Commissioner Brandvold Yes
Commissioner Hutchinson Yes
Commissioner Bell Yes
Commissioner Maitland Yes
Commissioner Glass Yes
Commissioner Johnson Yes
Commissioner Olson Yes
Ms. Turney  Yes
Chairman Lewis  Yes

Motion passed with a 13 – 1 vote.

ACTION:  Commissioner Keyes made a motion to come out of Closed Executive Session and Commissioner Bell noted nothing was discussed in Closed Executive Session except those items listed pursuant to the NMSA 1978, section 10-15-1 (H)(1) and no action was taken in Closed Executive Session. Commissioner Johnson seconded and a roll call was taken. The results were as follows:

Mr. Gutierrez  Yes
Mr. Huntsman  Yes
Commissioner Easterling  Yes
Commissioner Keyes  Yes
Commissioner Lee  Yes
Commissioner Brandvold  Yes
Commissioner Hutchinson  Yes
Commissioner Bell  Yes
Commissioner Maitland  Yes
Commissioner Glass  Yes
Commissioner Johnson  Yes
Commissioner Olson  Yes
Ms. Turney  Yes
Chairman Lewis  Yes

Motion passed unanimously.

ACTION:  Commissioner Bell made a motion to direct the New Mexico Environment Department to issue a Notice of Contemplated Action to Carlos S. McDaniel for the revocation of all his operating permits. Commissioner Brandvold seconded. Motion carried unanimously.

ACTION:  Commissioner Easterling made a motion to direct General Counsel of the Environment Department to pursue criminal action against Carlos S. McDaniel and David A. Garcia for fraud. Commissioner Glass and Commissioner Hutchinson seconded. Motion carried unanimously.

Item #11  Executive Session pursuant to NMSA 1978, Section 10-15-1 (H)(7), to discuss Notice of Intent to Sue for Violations of the Endangered Species Act Section 7 – Submitted by Forest Guardians, and Notification to Commission of Petition to EPA by the Navajo Nation for “treatment as a state” under the Clean Water Act.

ACTION:  Commissioner Johnson made a motion to go into Closed Executive Session pursuant to NMSA 1978, Section 10-15-1 (H)(7), to discuss Notice of Intent to Sue for Violation of the Endangered Species Action Section 7 – Submitted by
Forest Guardians, and Notification to Commission of Petition to EPA by the Navajo Nation for "treatment as a state" under the Clean Water Act. Commissioner Maitland seconded and a roll call was taken. The results were as follows:

Commissioner Easterling    Yes
Commissioner Keyes         Yes
Commissioner Lee           Yes
Commissioner Brandvold     Yes
Commissioner Hutchinson    Yes
Commissioner Bell          Yes
Commissioner Maitland      Yes
Commissioner Glass         Yes
Commissioner Johnson       Yes
Commissioner Olson         Yes
Ms. Turney                 Yes
Chairman Lewis             Yes

Motion passed unanimously.

ACTION: Commissioner Bell made a motion to come out of Closed Executive Session and noted the only issue discussed was pursuant to NMSA 1978, Section 10-15-1 (H)(7) and no action was taken. Commissioner Maitland seconded and a roll call was taken. The results were as follows:

Commissioner Easterling    Yes
Commissioner Keyes         Yes
Commissioner Lee           Yes
Commissioner Brandvold     Yes
Commissioner Hutchinson    Yes
Commissioner Bell          Yes
Commissioner Maitland      Yes
Commissioner Glass         Yes
Commissioner Johnson       Yes
Commissioner Olson         Yes
Ms. Turney                 Yes
Chairman Lewis             Yes

Motion passed unanimously.

Item #6 Discussion – EPA’s Draft Biological Assessment – Section 7 Consultation

Commissioner Hutchinson and Zack Shandler will draft a letter on behalf of the Commission to the EPA in regards to the Draft Biological Assessment – Section 7 Consultation of the standards.
Adjourn:

ACTION: Commissioner Keyes made a motion to adjourn. Commissioner Glass seconded and motion carried unanimously.

Chairman Greg Lewis