



**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

- 7 Environment Department
- 8 State Engineer & Interstate Stream Commission
- 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

17
18
19 **Minutes of the**
20 **New Mexico Water Quality**
21 **Control Commission Meeting**
22 **May 14, 2002**
23

24 The New Mexico Water Quality Control Commission (WQCC) meeting was held on May 14,
25 2002, at the New Mexico State Capitol Building in Santa Fe, New Mexico.

26
27 **MEMBERS PRESENT:**

- 28 Greg Lewis For Pete Maggiore, Chairman, New Mexico Environment Department
- 29 John Whipple State Engineer & Interstate Stream Commission
- 30 Julie Maitland Department of Agriculture
- 31 Howard Hutchinson Soil and Water Conservation Commission
- 32 Bill Olson Oil Conservation Division
- 33 Steve Glass City of Albuquerque - Municipal/County Representative
- 34 Lynn Brandvold Bureau of Geology and Mineral Resources
- 35 Larry Bell Department of Game and Fish
- 36 Dr. Conrad Keyes Member-at-Large
- 37 Irene Lee Member-at-Large

38
39 **MEMBERS ABSENT:**

- 40 David Johnson State Parks Division
- 41 Charles M. Easterling Member-at-Large

42
43 **OTHERS PRESENT:**

- 44 Zack Schandler, WQCC Counsel John Mantis
- 45 Geraldine Madrid-Chavez, WQCC Administrator Jim Brooks
- 46 Dr. Jim Davis, SWQB David M. Vackar
- 47 Bonnie Rabe, NMDA Peter Wilkinson
- 48 Stephen Wust, NMED David Oho, NMED-DWB
- 49 Donna Storcit Juan Martinez

1 Erasto Rivera Rimosella Pingselli
2 Joseph Ciegghi Robert Mundy
3 Graham Herefold Dan Howe
4 William Maxwell Gary Schiffmiller
5 Sheene Cameron Yvette Paruz
6 Rachel Conn Eric Ames, NMED Counsel
7 Dr. Ann McCambell attended via telephone.

8
9 Chairman Lewis called the meeting of the WQCC to order at 9:00 am.

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11 **Item #1: Roll Call**

12
13 Geraldine Madrid-Chavez, WQCC Administrator, took roll and noted a quorum was present.

14
15 **Item #2: Approval of the Agenda**

16
17 Chairman Lewis requested removing the approval of the April 9, 2002 minutes from the agenda.

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

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23 **Item #3: Approval of the April 4, 2002 minutes.**

24
25 **After discussion and amendments, Commissioner Olson moved to Table the minutes until**
26 **the next meeting to resolve the votes on Item #3. Commissioner Glass seconded the motion.**
27 **The motion passed unanimously.**

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30 **Item #4: Adoption of Statement of Reasons for Amendments to Sections 20.6.2.7,**
31 **-3106, -3108, -3190, -5003, and -5101 NMAC. (WQCC 01-17R)**

32
33 Mr. Shandler, Counsel for the Commission, presented to the Commissioners the Order and
34 Statement of Reasons for Amendment of Regulations with the new language. Mr. Shandler
35 noted that on page 2, section 3108 D, 3rd line down, the word “governments” should be struck for
36 the final draft. At this time Mr. Shandler ask for any additional modifications.

37
38 Commissioner Keyes noted that on page 2, section 3106B, the last sentence of the paragraph the
39 word “For” should be underlined. He also noted, that on page 6, part 7(b), the very last sentence
40 should be deleted.

41
42 Commissioner Brandvold noted that on page 6, part 7(c), second line the word “require” should
43 be replaced with the word “include.”

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45
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1 Commissioners Glass & Olson requested that on page 7, Item 8, be deleted and Item 9 would
2 become Item #8.

3
4 Commissioner Olson also noted that on page 6, Item 7(d), third line the "GWQBs" should be
5 replaced with the words "New Mexico."

6
7 **ACTION: Commission Olson moved to approve the Petition as amended.**
8 **Commissioner Brandvold seconded. Motion passed unanimously.**
9

10
11 **Item #5: Deliberation and decision on petition from the Game and Fish Department**
12 **for approval for the use of piscicides pursuant to 20.6.4.12.F NMAC, in**
13 **Costilla Creek, Taos County, heard on February 15, 2002 by a Hearing**
14 **Officer (WQCC 01-20)**
15

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

17
18 Commissioner Glass noted that on the transcript pages 21-40 were missing. Ms. Orth stated that
19 she would mail out the missing pages.

20
21 Ms. Orth noted improvements to the protocol resulting from the hearing, including a
22 commitment by the Department of Game & Fish to only use new product.

23
24 Commissioner Glass noted that the NEPA review is not yet complete for this project and did not
25 get a sense from the summary as to when it will be complete relative to when the project will be
26 implemented. Ms. Orth stated that by law the NEPA review must be completed before the
27 project is implemented.

28
29 The Commission accepted comments from the parties on the Hearing Officer's Report.

30
31 Dr. McCambell stated her concerns on the toxicity of the product, and took issue with some
32 statements in the report.

33
34 Mr. Robert Mundy expressed his concerns about the definition of New Product and the Protocol.

35
36 Mr. Sam Hitt, representing Wild Water Shed, expressed concern on the missing pages of the
37 transcript.

38
39 Mr. Weisbarth, Counsel for Department of Game & Fish, responded to some of the concerns
40 raised, and urged the Commission to deliberate and act without further argument.

41
42 Mr. Zack Shandler advised the Commission that they could continue if they felt comfortable
43 with the Report even though there are missing pages in the transcript.

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

- 5
6 • Commissioner Keyes requested that paragraph 5 of the Order should read “two hundred
7 yards” not “one hundred yards” and to correct the word from.
8 • Commissioner Glass requested that the following language be added to the end of paragraph
9 6 in the order by removing the period and adding a comma and the following language: “as
10 described in appendices C D & G of the Departments petition and including determination of
11 diethyl phthalate & acetone concentrations in treated water an appropriate distance
12 downstream 48 hours post treatment.”
13 • Commissioner Bell recommended adding the clarifying language to paragraph 12 of the
14 Order by striking the word new and adding the following language after the word product:
15 “that contains restricted use labeling and within the expiration parameter of that label.”
16

17 **ACTION: Commissioner Hutchinson moved to approve the Hearing Officer’s Report &**
18 **Draft Order as amended. Commissioner Keyes seconded. At this time a roll**
19 **call was called for by Chairman Lewis. The results were as follows:**

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21

| | |
|-------------------------|-----|
| Commissioner Keyes | Yes |
| Commissioner Lee | Yes |
| Commissioner Brandvold | Yes |
| Commissioner Hutchinson | Yes |
| Commissioner Bell | Yes |
| Commissioner Maitland | Yes |
| Commissioner Glass | Yes |
| Commissioner Olson | Yes |
| Commissioner Whipple | Yes |
| Commissioner Lewis | Yes |

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32 **Motion carried unanimously.**

33
34 **ACTION: Commissioner Maitland made a motion to move Items #7 & #10 behind item**
35 **#5 making them Items #6 and #7. Commissioner Whipple seconded. Motion**
36 **passed unanimously.**
37
38

39 **Item #6: Notification to Commission of Petition to EPA by the Navajo Nation for**
40 **“treatment as a state” under the Clean Water Act**

41
42 Paul Ritzma presented information to the Commission relating to the Petition to the EPA by the
43 Navajo Nation for “treatment as a state” under the Clean Water Act. Mr. Ritzma stated that on
44 behalf of the Environment Department he tried to ascertain the ownership interest of these lands
45 outside of the reservation proper so that we may make comments on them. Mr. Ritzma was
46 asked to inform the Commission on this issue so the Commission may either direct him or the

1 Commission's Counsel to give other input on the application. Comments on this issue will be
2 due in two months.

3
4 **ACTION:** **Commissioner Hutchinson moved that Paul Ritzma have the right to**
5 **comment on behalf of the Commission in this matter. Commissioner Lee**
6 **seconded. Motion passed unanimously.**

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9 **Item #7:** **Executive Session pursuant to NMSA 1978, Section 10-15-1 (H)(7), to discuss**
10 **Defenders of Wildlife and Forest Guardians v. U.S.E.P.A.**

11
12 **ACTION:** **Commissioner Lee made a motion to go into Closed Executive Session**
13 **pursuant to NMSA 1978, Section 10-15-1 (H)(7), to discuss Defenders of**
14 **Wildlife and Forest Guardians v. U.S.E.P.A. Commissioner Hutchinson**
15 **seconded and a roll call was taken. The results were as follows:**

| | |
|----|---|
| 16 | |
| 17 | Commissioner Keyes Yes |
| 18 | Commissioner Lee Yes |
| 19 | Commissioner Brandvold Yes |
| 20 | Commissioner Hutchinson Yes |
| 21 | Commissioner Bell Yes |
| 22 | Commissioner Maitland Yes |
| 23 | Commissioner Glass Yes |
| 24 | Commissioner Olson Yes |
| 25 | Commissioner Whipple Yes |
| 26 | Commissioner Lewis Yes |

27
28 **ACTION:** **Commissioner Maitland made a motion to come out of Closed Executive**
29 **Session. Commissioner Keyes seconded and a roll call was taken. The results**
30 **were as follows:**

| | |
|----|---|
| 31 | |
| 32 | Commissioner Keyes Yes |
| 33 | Commissioner Lee Yes |
| 34 | Commissioner Brandvold Yes |
| 35 | Commissioner Hutchinson Yes |
| 36 | Commissioner Bell Yes |
| 37 | Commissioner Maitland Yes |
| 38 | Commissioner Glass Yes |
| 39 | Commissioner Olson Yes |
| 40 | Commissioner Whipple Yes |
| 41 | Commissioner Lewis Yes |

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44 **Commission Maitland noted that no Action was taken during Executive Session and the**
45 **only issue discussed was the Defenders of Wildlife and Forest Guardians v. U.S.E.P.A.**
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4 **Item #8: Deliberation and decision on regulations proposed during the March 13-14,**
5 **2002 hearing on the Environment Department Surface Water Quality**
6 **Bureau's petition to amend Section 20.6.4.10, 20.6.4.11, 20.6.4.12, 20.6.4.113**
7 **and 20.6.4.900 NMAC of the Standards for Interstate and Intrastate Surface**
8 **Waters. (WQCC 01-18R)**
9

10 After deliberation and discussion by the Commission, the following action was taken:

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12 **ACTION: Commissioner Glass made a motion to substitute language in 20.6.4.11 D to**
13 **read:**

14 **“Compliance with water quality standards for the protection of**
15 **human health shall be determined from the analytical results of**
16 **representative grab samples, as defined in the Water Quality**
17 **Management Plan. Human Health Standards shall not be exceeded.”**

18
19 **Commissioner Olson seconded. Motion passed unanimously.**

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21 **ACTION: Commissioner Olson made a motion to adopt the proposal by the New**
22 **Mexico Environment Department as amended. Commissioner Bell seconded.**
23 **Motion passed unanimously.**

24
25 **Item #9 Other Business**

26
27 Commissioner Lee requested that before a Commission Meeting is cancelled, there be
28 concurrence by all Commissioners. Commissioner Lee also requested that if there are any
29 changes in meetings she be notified by written notice.

30
31 Dr. Davis presented an update to the Commission on HB 388. Dr. Davis stated that his office
32 has been working closely with the Oil Conservation Division and the State Engineer's Office.
33 Dr. Davis stated that one thing that occurs is that the Standards as they currently exist are not
34 protective of the designated uses, absent HB 388. Dr. Davis expects to have a recommendation
35 for the Commission at the next regularly scheduled meeting.

36
37 **Item #10 Next Meeting**

38
39 The next WQCC meeting will be in Santa Fe, NM on June 11, 2002 at 9:00 am.

40
41 **Adjourn:**

42 **ACTION: Commissioner Brandvold made a motion to adjourn. Commissioner Olson**
43 **seconded and motion carried unanimously.**

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Chairman *[Handwritten Signature]*, acting