



**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 4/8/03

**Minutes of the  
New Mexico Water Quality  
Control Commission Meeting  
November 12-13, 2002**

25 The New Mexico Water Quality Control Commission (WQCC) meeting was held on November  
26 12, 2002, at the New Mexico State Capitol Building in Santa Fe, New Mexico.

27  
28 **MEMBERS PRESENT:**

- 29 John D'Antonio Chairman, New Mexico Environment Department
- 30 Doug Murray Office of State Engineer
- 31 Julie Maitland Department of Agriculture
- 32 Howard Hutchinson Soil and Water Conservation Commission
- 33 Steve Glass City of Albuquerque - Municipal/County Representative
- 34 Lynn Brandvold Bureau of Geology and Mineral Resources
- 35 Conrad Keyes Member-at-Large
- 36 Irene Lee Member-at-Large
- 37 Charles M. Easterling Member-at-Large
- 38 Mike Sloane Department of Game and Fish
- 39 Bill Olson Oil Conservation Division
- 40 David Johnson State Parks Division

41  
42 **OTHERS PRESENT:**

- 43 Zach Schandler, WQCC Counsel Jolene L. McCaleb
- 44 Geraldine Madrid-Chavez, WQCC Administrator Elaine Cimino
- 45 Marcy Leavitt Kit Roush
- 46 Kelly Bitner Chris Mechels
- 47 Glenn Saums Ana Marie Ortiz
- 48 Dal Moellenberg BJ Brock
- 49 Maxine Goad Mike Saladen

1 Charles Nylander  
2 Phil Wardwell  
3 William Maxwell  
4 Suedeem Kelly  
5 John Montgomery

Barbara Kilay  
Joni Arends  
Stephanie Stringer  
Louis Rose

6  
7 Chairman D'Antonio called the meeting of the WQCC to order at 9:10 am.

8  
9 **Item #1: Roll Call**

10  
11 Geraldine Madrid-Chavez, WQCC Administrator, took roll and noted a quorum was present.

12  
13 **Item #2: Approval of the Agenda**

14  
15 The following changes were made:

- 16  
17
  - Remove item #4 and item #13.

18  
19 **ACTION: Commissioner Johnson made a motion to approve the agenda as amended.**  
20 **Commissioner Olson seconded. The motion passed unanimously.**

21  
22 **Item #3: Approval of the minutes of October 1, 2002**

23  
24 **ACTION: After discussion and amendments, Commissioner Easterling moved to**  
25 **approve the minutes of October 1, 2002 as amended. Commissioner**  
26 **Brandvold seconded the motion. The motion passed with abstentions by**  
27 **Commissioner Olson and Commissioner Johnson.**

28  
29 **Approval of the minutes of August 13, 2002**

30  
31 **ACTION: After discussion and amendments, Commissioner Olson moved to approve**  
32 **the minutes of August 13, 2002 as amended. Commissioner Glass seconded**  
33 **the motion. The motion passed unanimously.**

34  
35 **Item #5: Request to set hearing in the matter on the Notice of Appeal of the Arroyo**  
36 **Park Discharge Plan Requirement, September 5, 2002. (WQCC 02-16A)**

37  
38 Ms. Leavitt informed the Commission that no one was present to represent Arroyo Park and  
39 requested that the hearing be set. This item was referred to later in the evening.

40  
41 **Item #6: Request to set a hearing by the New Mexico Environment Department**  
42 **Ground Water Bureau Petition to Amend Ground Water Quality Standards**  
43 **Contained in 20.6.2 NMAC, New Mexico Water Quality Control Commission**  
44 **Regulations. (WQCC 02-18A)**

1 Ms. Marcy Leavitt requested a hearing be set for the New Mexico Environment Department  
2 Ground Water Bureau Petition to Amend Ground Water Quality Standards Contained in 20.6.2  
3 NMAC, New Mexico Water Quality Control Commission Regulations. (WQCC 02-18-A)

4  
5 **ACTION:** **Commissioner Johnson moved that the April WQCC regularly scheduled**  
6 **meeting be scheduled for 2 days April 8<sup>th</sup> & 9<sup>th</sup>, 2003, and a hearing be set in**  
7 **Santa Fe, NM on April 8th & 9th on the Petition to Amend Ground Water**  
8 **Quality Standards Contained in 20.6.2 NMAC, New Mexico Water Quality**  
9 **Control Commission Regulations. Commissioner Olson seconded. The**  
10 **motion carried unanimously.**

11  
12 **ACTION:** **Commissioner Glass moved that the sitting Chair of the Commission in April**  
13 **sit as the Hearing Officer. Commissioner Lee seconded. The motion carried**  
14 **unanimously.**

15  
16 **Item #7:** **Request for hearing on petition from New Mexico Game and Fish**  
17 **Department to use a piscicide for the restoration of Rio Grande Cutthroat**  
18 **Trout in San Antonio Creek and East Fork Jemez River on the Valles**  
19 **Caldera and Santa Fe National Forest.**

20  
21 Mr. Peter Wilkinson, Game and Fish and Mr. Frank Weisbarth, Counsel for Game & Fish,  
22 requested a hearing to use piscicide for the restoration of Rio Grande Cutthroat Trout in San  
23 Antonio Creek and East Fork Jemez River on the Valles Caldera and Santa Fe National Forest.

24  
25 Dr. Jim Davis stated that the Department recommends approval of the petition for use of  
26 piscicide in San Antonio Creek and East Fork Jemez River on the Valles Caldera and Santa Fe  
27 National Forest. With the condition acquiring performance and recording a pre-treatment  
28 amphibian survey, and suggest they provide a more readable appropriate scaled map.

29  
30 **ACTION:** **Commissioner Keyes moved to set the hearing for January 14 & 15, 2003.**  
31 **Commissioner Olson seconded. Motion carried unanimously.**

32  
33 **ACTION:** **Commissioner Easterling moved that the sitting Chair of the Commission be**  
34 **the Hearing Officer and that the hearing be taped. Commissioner Brandvold**  
35 **seconded. Motion carried unanimously.**

36  
37 **Chairman D'Antonio announced we would go back to item #5:**

38  
39 **ACTION:** **Commissioner Johnson moved to table item #5. Commissioner Keyes**  
40 **seconded. Motion carried unanimously.**

41  
42 **Item #8:** **Continuation of October 1, 2002 hearing and possible decision in the matter**  
43 **of Proposed Revisions to Statewide Water Quality Management Plan**  
44 **(WQMP). (WQCC 02-01)**

45  
46 Chairman D'Antonio announced "the time is now 10:45am and we are meeting in Room 307 of  
47 the State Capitol Building in Santa Fe on November 12, 2002 – this hearing is a continuation of a  
minutes of WQCC  
meeting 11/12-13/02

1 hearing begun on October 1, 2002 and we are here to consider the adoption of the Water Quality  
2 Management Plan.”

3  
4 Chairman D’Antonio announced that a preliminary matter must be handled before the hearing  
5 continued. The Department received a letter from Mr. Mechels contesting the validity of the  
6 hearing notice. At this time Chairman D’Antonio announced that each party would be allowed 5  
7 minutes to give a statement before the hearing continues. The order is as follows:

- 8 • Chris Mechels
- 9 • Eric Ames, Counsel for the Department
- 10 • Jolene McCaleb, SJWC
- 11 • Joni Arends, CCNS

12  
13 Mr. Mechels requested that the hearing be rescheduled due to improper notice of hearing.  
14 Mr. Ames stated the public notice fully complied with statutory requirements.  
15 Ms. Jolene McCaleb stated that the SJWC believes that Mr. Mechels claim of inadequate  
16 public notice is well taken, and noted the SJWC takes no position with regard to the relief  
17 requested by Mr. Mechels.  
18 Ms. Arends of CCNS stated that there has not been adequate or proper notice of the WQMP  
19 hearing.

20  
21 After questions and discussion by the Commissioners and parties, the following action was  
22 taken:

23  
24 **ACTION:** **Commissioner Johnson moved that the WOCC to into Executive Session.**  
25 **The authority for closure of the meeting is Section 10-15-1 (H) (7) to discuss**  
26 **matters pertaining to threatened or pending litigation over the noticed**  
27 **requirement for the Water Quality Management Plan hearing.**  
28 **Commissioner Sloane seconded.** A roll call vote was taken and the results  
29 are as follows:

30		
31	<b>Commissioner Sloane</b>	<b>Yes</b>
32	<b>Commissioner Lee</b>	<b>Yes</b>
33	<b>Commissioner Keyes</b>	<b>Yes</b>
34	<b>Commissioner Hutchinson</b>	<b>Yes</b>
35	<b>Commissioner Glass</b>	<b>Yes</b>
36	<b>Commissioner Maitland</b>	<b>Yes</b>
37	<b>Commissioner D’Antonio</b>	<b>Yes</b>
38	<b>Commissioner Johnson</b>	<b>Yes</b>
39	<b>Commissioner Olson</b>	<b>Yes</b>
40	<b>Commissioner Brandvold</b>	<b>Yes</b>
41	<b>Commissioner Murray</b>	<b>Yes</b>
42	<b>Commissioner Easterling</b>	<b>Yes</b>
43		
44		
45		
46		

1 **ACTION:** Commissioner Easterling moved to come back into open session.  
2 Commissioner Johnson seconded.

3  
4 Commissioner Sloane Yes  
5 Commissioner Lee Yes  
6 Commissioner Keyes Yes  
7 Commissioner Hutchinson Yes  
8 Commissioner Glass Yes  
9 Commissioner Maitland Yes  
10 Commissioner D'Antonio Yes  
11 Commissioner Johnson Yes  
12 Commissioner Olson Yes  
13 Commissioner Brandvold Yes  
14 Commissioner Murray Yes  
15 Commissioner Easterling Yes

16  
17 Commissioner Murray stated that the matters discussed in the Closed  
18 Session were only those matters specified in the original motion.

19  
20 **ACTION:** Commissioner Keyes moved the hearing on the New Mexico Water Quality  
21 Management Plan be:

- 22  
23 a. left open for the December 2002 meeting of the Commission.  
24 b. the Department re-do the hearing notice to the public.  
25 c. the Department make no further changes to the October 1 version of  
26 Work Element 1 – 10.  
27 d. we will schedule the December 2002 meeting later this afternoon bearing  
28 in mind any required time notice requirements.  
29 e. the Department post the October 1 version on the web-site with an  
30 explanation that it is the current version.

31  
32 Commissioner Easterling seconded. Motion carried unanimously.

33  
34 **ACTION:** Commissioner Glass moved that the date be printed on the Public Notice  
35 itself and the reference to NMSA 74-6-6 not be included, instead a reference  
36 of the continuing planning process be included. Commissioner Johnson  
37 seconded. Motion carried unanimously.

38  
39 **ACTION:** Commissioner Hutchinson moved to reconsider the previous motion.  
40 Commissioner Glass seconded. Motion carried unanimously.

41  
42 **ACTION:** Commissioner Easterling moved to rescind the previous motion made by  
43 Commissioner Glass. Commissioner Sloane seconded. Motion carried  
44 unanimously.

1 **ACTION:** **Commissioner Glass moved that when the public noticed is published that it**  
2 **be dated as to its date of publication. Commissioner Johnson seconded.**  
3 **Motion carried unanimously.**  
4

5 **ACTION:** **Commissioner Johnson moved to set the WQMP hearing for December 16<sup>th</sup>**  
6 **& 17<sup>th</sup>, 2002. Commissioner Maitland seconded. Motion carried**  
7 **unanimously.**  
8

9 **Item #5:**

10  
11 **ACTION:** **Commissioner Keyes made a motion to remove Item #5 from the table.**  
12 **Commissioner Hutchinson seconded. Motion carried unanimously.**  
13

14 **ACTION:** **Commissioner Glass moved to set the Arroyo Park Discharge Plan**  
15 **Requirement hearing for December 16<sup>th</sup> & 17<sup>th</sup>, 2002 following the WQCC**  
16 **meeting. Commissioner Hutchinson seconded. Motion carried unanimously.**  
17

18 **Item #10:** **Request for hearing in the matter of the Petition for a hearing on the**  
19 **Secretary's determination dated August 30, 2002 – Cobre Mining Company,**  
20 **Petitioner. (WQCC 02-12A)**  
21

22 **Item #11:** **Request for hearing in the matter of the Petition for a hearing on the**  
23 **Secretary's determination dated August 30, 2002 – Phelps Dodge Tyrone,**  
24 **Inc., Petitioner. (WQCC 02-13A)**  
25

26 **Item #12:** **Request for hearing in the matter of the Petition for a hearing on the**  
27 **Secretary's determination dated August 30, 2002 – Chino Mines Company,**  
28 **Petitioner. (WQCC 02-14A)**  
29

30 Mr. Dal Mullenberg, Counsel for Phelps Dodge, stated to the Commission that he is speaking  
31 jointly of three separate cases. Mr. Mullenberg is requesting a hearing date be set in all the  
32 above matters.  
33

34 Mr. Zach Shandler, Counsel for the WQCC, suggested more briefings from both the Department  
35 and the Petitioner of no more than 8 pages be filed with the WQCC Administrator before  
36 December 6, 2002.  
37

38 **ACTION:** **Commissioner Brandvold moved that the Environment Department do a**  
39 **brief in response to this objection, no more than 8 pages, and both parties do**  
40 **an additional brief, no more than 8 pages on the following issues: (1) hearing**  
41 **officer issue, and (2) consolidation issue of all 3 cases to be delivered to the**  
42 **Administrator by December 6, 2002. Commissioner Johnson seconded.**  
43 **Motion carried unanimously.**  
44  
45  
46  
47

1 **ACTION:** **Commissioner Johnson moved that the Chair of the WQCC sit as hearing**  
2 **officer. Commissioner Easterling seconded. Motion carried unanimously.**

3  
4 **Item #9:** **Hearing on Notice of Appeal – Determination that a discharge permit is**  
5 **required for Taos Country Club Casitas. (WQCC 02-06A)**  
6

7 Chairman D'Antonio announced the time is now 2:55pm and we are meeting in room 307 of the  
8 State Capitol Building in Santa Fe, New Mexico, November 12, 2002. This hearing is a  
9 continuation of a hearing begun October 1, 2002, and we are here to consider the petition for  
10 review submitted by Aldebaran Enterprises, also known as the petitioner, regarding Taos  
11 Country Club Casitas. The appeal is of the New Mexico's Environment Departments  
12 determination that the Taos Country Club Casitas Condominium project is required to submit a  
13 discharge permit application under water quality commission regulation 20.6.2.1202 NMAC.  
14 The hearing will be conducted in accordance with state law section 74-6-5 NOMP, and the  
15 appeal hearing rules 20.1.3 NMAC. The legal standard for today's hearing is that the petitioner  
16 has the burden of going forward with the evidence and proving by preponderance of the evidence  
17 that the facts relied upon justified the relief sought in the petition.  
18

19 The order of the hearing will be as follows:

- 20 1. Petitioners opening arguments.
- 21 2. Department opening arguments.
- 22 3. Petitioner's examination of its witness.
- 23 4. Departments cross examination of the witness.
- 24 5. Petitions redirect of the witness.
- 25 6. Commissioner cross examination of the witness
- 26 7. Closing arguments by both sides.

27  
28 No settlement had been reached and no preliminary matters needed to be taken care of so the  
29 hearing began.  
30

31 At 10:30am, Chairman D'Antonio announced that the record was closed on the Taos Country  
32 Club Casitas hearing.  
33

34 **ACTION:** **Commissioner Glass moved to deny the Petitioners appeal of determination**  
35 **by the Ground Water Bureau that a discharge permit is required.**  
36 **Commissioner Olson seconded. Motion carried unanimously.**  
37 **Commissioners Johnson and Easterling were not present for the vote.**  
38

39 **Item #13: Other Business**  
40

41 **ACTION:** **Commissioner Hutchinson moved the WQCC did find in favor of the**  
42 **defendant on the WQMP but noted that NMED was not trying to**  
43 **intentionally deceive the public. Commissioner Glass seconded. Motion**  
44 **carried unanimously.**  
45

46 Commissioner Hutchinson updated the Commission on the August 30<sup>th</sup> letter sent to the  
47 congressional delegation regarding 305(b) Report.

1 Mr. Zach Shandler gave information to the Commission on the following:  
2

- 3 1. The December meeting will be held at Mabry Hall at the Department of Education
- 4 2. The WQCC is being sued by Los Alamos on the Human Health Standards.

5  
6 Mr. Shandler requested that the Commission revisit Phelps Dodge issue and noted a hearing  
7 must be scheduled within 90 days.  
8

9 **ACTION:** **Commissioner Olson moved to set a hearing for Cobre Mining-WQCC 02-**  
10 **12A, Tyrone-WQCC 02-13A, and Chino Mines-WQCC 02-14A to begin on**  
11 **December 17, 2002 if needed. Chairman will have the authority to select a**  
12 **hearing officer and location if needed. Commissioner Hutchinson seconded.**  
13 **Motion carried unanimously.**  
14

15 **Item #14: Next Meeting**

16  
17 The next WQCC meeting will be on December 16 & 17, 2002 at the Department of Education  
18 Building in Mabry Hall.  
19

20 **ACTION:** **Commissioner Olson moved to adjourn. Commissioner Brandvold seconded.**  
21 **Motion carried unanimously.**  
22

23  
24  
25  
26  
27  
28  
29  
30 

---

**WQCC Chairman**

