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

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

MEMBERS PRESENT:

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

OTHERS PRESENT:

Zach Schandler, WQCC Counsel
Geraldine Madrid-Chavez, WQCC Administrator
Marcy Leavitt
Kelly Bitner
Glenn Saums
Dal Moellenberg
Maxine Goad

Jolene L. McCaleb
Elaine Cimino
Kit Roush
Chris Mechels
Ana Marie Ortiz
BJ Brock
Mike Saladen

Approved 4/8/03
Chairman D’Antonio called the meeting of the WQCC to order at 9:10 am.

**Item #1: Roll Call**

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

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

The following changes were made:

- Remove item #4 and item #13.

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

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

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

Approval of the minutes of August 13, 2002

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

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

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

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

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

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

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

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

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

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

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

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

Chairman D’Antonio announced we would go back to item #5:

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

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

Chairman D’Antonio announced “the time is now 10:45am and we are meeting in Room 307 of 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
hearing begun on October 1, 2002 and we are here to consider the adoption of the Water Quality Management Plan.”

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

- Chris Mechels
- Eric Ames, Counsel for the Department
- Jolene McCaleb, SJWC
- Joni Arends, CCNS

Mr. Mechels requested that the hearing be rescheduled due to improper notice of hearing.

Mr. Ames stated the public notice fully complied with statutory requirements.

Ms. Jolene McCaleb stated that the SJWC believes that Mr. Mechels claim of inadequate public notice is well taken, and noted the SJWC takes no position with regard to the relief requested by Mr. Mechels.

Ms. Arends of CCNS stated that there has not been adequate or proper notice of the WQMP hearing.

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

**ACTION:** Commissioner Johnson moved that the WQCC go into Executive Session. The authority for closure of the meeting is Section 10-15-1 (H) (7) to discuss matters pertaining to threatened or pending litigation over the noticed requirement for the Water Quality Management Plan hearing.

Commissioner Sloane seconded. A roll call vote was taken and the results are as follows:

- Commissioner Sloane: Yes
- Commissioner Lee: Yes
- Commissioner Keyes: Yes
- Commissioner Hutchinson: Yes
- Commissioner Glass: Yes
- Commissioner Maitland: Yes
- Commissioner D’Antonio: Yes
- Commissioner Johnson: Yes
- Commissioner Olson: Yes
- Commissioner Brandvold: Yes
- Commissioner Murray: Yes
- Commissioner Easterling: Yes

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

Commissioner Sloane  Yes
Commissioner Lee  Yes
Commissioner Keyes  Yes
Commissioner Hutchinson  Yes
Commissioner Glass  Yes
Commissioner Maitland  Yes
Commissioner D’Antonio  Yes
Commissioner Johnson  Yes
Commissioner Olson  Yes
Commissioner Brandvold  Yes
Commissioner Murray  Yes
Commissioner Easterling  Yes

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

ACTION: Commissioner Keyes moved the hearing on the New Mexico Water Quality Management Plan be:

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

Commissioner Easterling seconded. Motion carried unanimously.

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

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

ACTION: Commissioner Easterling moved to rescind the previous motion made by Commissioner Glass. Commissioner Sloane seconded. Motion carried unanimously.
ACTION: Commissioner Glass moved that when the public noticed is published that it be dated as to its date of publication. Commissioner Johnson seconded. Motion carried unanimously.


Item #5: Commissioner Keves made a motion to remove Item #5 from the table. Commissioner Hutchinson seconded. Motion carried unanimously.

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

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

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

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

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

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

ACTION: Commissioner Brandvold moved that the Environment Department do a brief in response to this objection, no more than 8 pages, and both parties do an additional brief, no more than 8 pages on the following issues: (1) hearing officer issue, and (2) consolidation issue of all 3 cases to be delivered to the Administrator by December 6, 2002. Commissioner Johnson seconded. Motion carried unanimously.
ACTION: Commissioner Johnson moved that the Chair of the WQCC sit as hearing officer. Commissioner Easterling seconded. Motion carried unanimously.

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

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

The order of the hearing will be as follows:

1. Petitioners opening arguments.
2. Department opening arguments.
3. Petitioner’s examination of its witness.
4. Departments cross examination of the witness.
5. Petitions redirect of the witness.
6. Commissioner cross examination of the witness
7. Closing arguments by both sides.

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

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

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

Item #13: Other Business

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

Commissioner Hutchinson updated the Commission on the August 30th letter sent to the congressional delegation regarding 305(b) Report.
Mr. Zach Shandler gave information to the Commission on the following:

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

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

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

Item #14: Next Meeting

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

ACTION: Commissioner Olson moved to adjourn. Commissioner Brandvold seconded. Motion carried unanimously.

WQCC Chairman