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April 14, 2016



Via Fed-Ex

Pam Castaneda
WQCC Administrator
New Mexico Environment Department
1190 S. St. Francis Dr., Suite S-2102
Santa Fe, NM 87502

Re: WQCC No. 14-05(R) In the Matter of the Triennial Review of Standards for Interstate and Intrastate Surface Waters, 20.6.4 NMAC
San Juan Water Commission's Exceptions to the Hearing Officer's Proposed Statement of Reasons and Final Order and Request That Either the Hearing Officer Issue a Revised Report Setting Forth the Positions of All Triennial Review Participants Or The WQCC Strike The Report

Dear Ms. Castaneda:

Please find enclosed for filing an original and 16 copies of the above-referenced document. Please endorse one copy and return it to our office in the self-addressed stamped envelope provided for your use.

If you have any questions or need further information, please do not hesitate to call.

Very truly yours,

A handwritten signature in blue ink that reads 'Lou Ann Fike'.

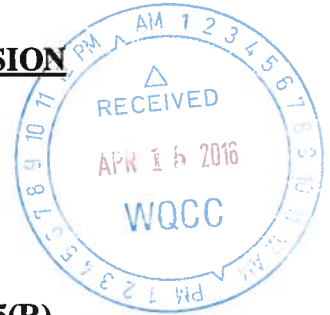
Lou Ann Fike
Assistant

LF/

Enclosure

cc: San Juan Water Commission

STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION



In the Matter of:)
)
PROPOSED AMENDMENTS TO)
STANDARDS FOR INTERSTATE)
AND INTRASTATE SURFACE)
WATERS, 20.6.4 NMAC)

No. WQCC 14-05(R)

**SAN JUAN WATER COMMISSION'S EXCEPTIONS
TO THE HEARING OFFICER'S
PROPOSED STATEMENT OF REASONS AND FINAL ORDER
and
REQUEST THAT EITHER THE HEARING OFFICER ISSUE A REVISED REPORT
SETTING FORTH THE POSITIONS OF ALL TRIENNIAL REVIEW PARTICIPANTS
OR THE WQCC STRIKE THE REPORT**

COMES NOW San Juan Water Commission ("SJWC"), by and through its counsel of record, Taylor & McCaleb, P.A., and in accordance with the March 4, 2016, Order Setting Remaining Schedule, the July 10, 2014, Scheduling Order, Paragraph 4 of the January 30, 2015, Scheduling Order, and Paragraph 406(B) of the Hearing Officer's July 10, 2014, Procedural Order, hereby submits its exceptions to the Hearing Officer's Proposed Statement of Reasons and Final Order issued March 16, 2016 ("Proposed Reasons and Order" or "Report"). SJWC objects to the Hearing Officer's Report because it fails to describe the positions taken and the evidence presented by SJWC and others during the Triennial Review hearing. Instead, the Proposed Reasons and Order is a wholesale, nearly verbatim adoption of the New Mexico Environment Department's ("NMED") post-hearing Order and Statement of Reasons for Amendment of Standards. As a result, and contrary to the procedures governing the Triennial Review and past practice, the Hearing Officer's Proposed Reasons and Order fails to show full consideration of all evidence, independent analysis of the issues, and autonomous development

of recommendations to the Water Quality Control Commission (“WQCC”). SJWC therefore requests that either (1) the Hearing Officer provide a comprehensive and independent report to the WQCC summarizing the evidence presented and positions taken by all parties during the Triennial Review hearing and reflecting the Hearing Officer’s independent analysis of the evidence or (2) the WQCC reject the Hearing Officer’s Proposed Reasons and Order and deliberate without reference to or consideration of it.

I. INTRODUCTION

At the request of NMED, the WQCC elected to have a Hearing Officer preside over this Triennial Review of the state’s surface water quality standards. *See* New Mexico Environment Department, Surface Water Quality Bureau’s Petition to Amend the Surface Water Quality Standards (20.6.4 NMAC) and Request for Hearing at 2 (June 25, 2014). The WQCC “delegated all powers and duties granted under Section 104 of the WQCC Guidelines” to the three Hearing Officers who have presided over this two-year Triennial Review: Butch Tongate, Christopher T. Saucedo and Morris J. Chavez. *See* Notice of Hearing Officer Designation (Nov. 25, 2014); Notice of Substitute Hearing Officer Designation (Apr. 16, 2015); Procedural Order at 5 (July 10, 2014). The powers and duties of the Hearing Officer under Section 104 include, “if requested by the [WQCC], preparing and filing a *report of the hearing*, with recommendations for action.” Guidelines for Water Quality Control Commission Regulation Hearings (June 8, 1993) (“WQCC Guidelines”), § 104(B)(4) (emphasis added). Section 406 of the WQCC Guidelines further requires that a Hearing Officer’s report “*shall identify the issues* addressed at the hearing, *explain the testimony* and make a recommendation for [WQCC] action” (Emphasis added.) Reflecting this requirement, Section 406(A) of the July 10, 2014, Procedural Order for the Triennial Review stated: “The Hearing Officer shall file a *report of the hearing*.

The report *shall identify the issues addressed at the hearing, set out the parties' final proposals for change, [and] facilitate [WQCC] deliberations on the proposed changes*¹ (Emphasis added.) A review of the Hearing Officer reports from the past two Triennial Reviews shows a history and practice of (1) describing all issues raised during the hearing, (2) providing a detailed summary of all testimony, other evidence, and public comment presented on each issue, both pro and con, and (3) outlining the post-hearing legal arguments and proposed statements of reasons submitted by the parties. *See generally* Hearing Officer's Report in WQCC 08-13(R) (May 26, 2010); Hearing Officer's Report in WQCC 03-05(R) (Oct. 15, 2004).² Obviously, such practice "facilitate[s] [WQCC] deliberations on the proposed changes," as required by the Procedural Order governing this proceeding. Procedural Order, § 406(A) (July 10, 2014). Duplication of NMED's post-hearing submittal does not.

SJWC has participated substantially throughout this Triennial Review proceeding. SJWC began formally participating in this Triennial Review when it filed its 153-page Notice of Intent to Present Technical Testimony on December 12, 2014, which included the written direct technical testimony of SJWC's expert witness, Charles L. Nylander, and more than 100 pages of exhibits. On February 13, 2015, SJWC filed its Notice of Filing Rebuttal Technical Testimony, including written rebuttal testimony by Mr. Nylander and supporting exhibits. SJWC also fully participated in the four-day Triennial Review hearing in October 2015, presenting the hours-long

¹ On August 7, 2015, Hearing Officer Morris J. Chavez issued a revised Procedural Order containing no reference to a Hearing Officer report. However, Mr. Chavez did prepare the report titled "Proposed Statement of Reasons and Final Order" that is the subject of SJWC's exceptions set out herein.

² Pursuant to an inquiry from the Hearing Officer at the close of the Triennial Review hearing, on October 21, 2015, counsel for SJWC provided him with a copy of the Hearing Officer's Report in WQCC 03-05(R).

direct and rebuttal oral testimony of Mr. Nylander and cross-examining other witnesses through its counsel. Mr. Nylander's written testimony and exhibits were admitted into evidence at the hearing. After the hearing, SJWC submitted a 50-page Closing Legal Arguments and Proposed Statement of Reasons (Jan. 15, 2016) on the issues it addressed during the Triennial Review hearing, which included extensive citations to the hearing transcript and hearing exhibits. As fully detailed in that document, SJWC presented evidence during the Triennial Review hearing:

1. supporting adoption of NMED's temporary standards proposal for 20.6.4.10(F) and 20.6.4.12(H) NMAC, with several modifications proposed by SJWC;
2. supporting NMED's proposal to downgrade certain designated uses for 29 ephemeral water body segments based on Use Attainability Analyses ("UAA") conducted since the last Triennial Review;
3. opposing NMED's proposal to upgrade the recreational designated use for nine water body segments from secondary contact to primary contact on the ground NMED has failed to provide sufficient credible scientific or other evidence to meet the regulatory requirements for upgrading the designated use; and
4. highlighting its concerns about the adverse impacts of blind adherence to EPA's relatively recent rebuttable presumption that all waters are fishable/swimmable unless proved to be otherwise after a UAA, and encouraging the WQCC to form a working group to consult with EPA to develop a less onerous method of establishing appropriate designated uses for the tens of thousands of miles of ephemeral streams in New Mexico that are not, and never will be, fishable and swimmable.

Astoundingly, the Hearing Officer's Report fails to summarize—or to even mention—SJWC's evidence on the three NMED proposals addressed by SJWC, including SJWC's complete

opposition to NMED’s proposal to upgrade the recreational designated use on nine stream segments. Nor does the Report refer in any way to SJWC’s concerns about the rebuttable presumption or to SJWC’s request that the WQCC form a working group to tackle the problems caused by adoption of the rebuttable presumption. In fact, other than listing SJWC among the parties presenting technical testimony during the Triennial Review (in ¶ 17), the Hearing Officer mentions SJWC’s positions in the Triennial Review only once. In Paragraph No. 43—again, a paragraph drafted by NMED—the Report states: “After initially opposing the proposed temporary standard language, the San Juan Water Commission at hearing supported NMED’s proposed language on Temporary Standards.” This explanation of SJWC’s change in position and support for adoption of NMED’s temporary standards proposal is incomplete at best, and misleading at worst. For the reasons fully set forth in 42 separate paragraphs at pages 7-18 of SJWC’s Closing Legal Arguments and Proposed Statement of Reasons, SJWC encouraged the WQCC to modify SWQB’s proposal and to apply temporary standards not only to criteria, but also to designated uses and permittees, as authorized by EPA. In fact, SJWC proposed (at 16 (¶ 10), 17 (¶¶ 11, 12)) regulatory language for WQCC consideration, but those proposals are not found in the Hearing Officer’s Report because NMED did not address them.

Disregarding the Hearing Officer report requirements mandated by the WQCC’s Hearing Officer designations, Sections 104 and 406 of the WQCC Guidelines, and the July 10, 2014, Procedural Order, the Hearing Officer’s Proposed Reasons and Order utterly fails to identify the rebuttable presumption issue raised and addressed by SJWC at the Triennial Review hearing or to explain or even refer to the extensive testimony and other evidence presented by SJWC concerning NMED’s proposals—particularly SJWC’s proposed modifications to NMED’s temporary standards proposal (20.6.4.10(F) and 20.6.4.12(H) NMAC) and SJWC’s objections to

NMED's proposal to upgrade nine stream segments from the secondary contact to the primary contact designated use. In fact, rather than an independent and unbiased report of the Triennial Review hearing, with recommendations to the WQCC reflecting considered reasoning and analysis by the Hearing Officer, the Proposed Reasons and Order is a wholesale, nearly verbatim adoption of NMED's Order and Statement of Reasons for Amendment of Standards, including a 35-page "Attachment A" (amendments to the water quality standards) identical to NMED's "Attachment A" to its Closing Arguments and Proposed Final Rule (Jan. 15, 2016).

The Proposed Reasons and Order therefore not only violates the Hearing Officer report requirements applicable to this Triennial Review, but also departs significantly from past Hearing Officer practice, completely undermines the fairness of this Triennial Review, and has "render[ed] [SJWC's] right to be heard illusory." *Atlixco Coalition v. Maggiore*, 1998-NMCA-134, ¶ 24, 125 N.M. 786. SJWC respectfully submits that the error in the Hearing Officer's approach to his report must be remedied through issuance of a new report complying with the WQCC Guidelines and past Hearing Officer practice, or the WQCC must strike the Proposed Reasons and Order and deliberate without input from the Hearing Officer.

II. ARGUMENT

As already noted, Section 406 of the WQCC Guidelines and Section 406(A) of the Procedural Order require that the Hearing Officer's Report identify all issues addressed at the Triennial Review hearing and explain the testimony provided by the parties. These requirements are appropriate, given the purpose of the report to "facilitate," or inform, the WQCC's deliberations. Procedural Order (July 10, 2014), § 406(A). WQCC acceptance and use of the Hearing Officer's Proposed Reasons and Order in its current form would deprive SJWC of a fair hearing and be contrary to law given the report's failure to comply with the WQCC Guidelines

and the Procedural Order by including a discussion of all issues addressed and a description of all evidence presented during the Triennial Review hearing. *See Johnson v. N.M. Oil Conserv. Comm'n*, 1999-NMSC-021, ¶ 18, 127 N.M. 120 (“[T]he essence of justice is largely procedural,” and failure to follow procedural rules entitles aggrieved party to relief); *Atlixco Coalition*, 1998-NMCA-134, ¶ 15 (administrative agency “is required to act in accordance with its own regulations”); *Maestas v. Bd. of Trustees*, 1985-NMSC-068, ¶ 8, 103 N.M. 77 (agency must follow its “established procedures” or its exercise of its discretion is unreasonable and arbitrary); *Board of Educ. of Alamogordo Pub. Schools Dist. No. 1 v. Jennings*, 1982-NMCA-135, ¶ 94, 98 N.M. 602 (“An administrative agency must follow its own regulations. . . . Failure to do so deprives the appellant of a fair hearing”). In fact, several New Mexico appellate decisions refer with approval to the fact that proper Hearing Officer reports summarize the evidence presented, both pro and con. *See, e.g., N.M. Mining Ass'n v. WQCC*, 2007-NMCA-084, ¶ 9, 142 N.M. 200 (“Following the [Triennial Review] hearing, the hearing officer prepared a detailed report summarizing the evidence, examining the arguments for and against the amendments, and making recommendations with respect to each proposed amendment”); *Citizen Action v. Sandia Corp.*, 2008-NMCA-031, ¶¶ 8, 23, 34, 36, 143 N.M. 620 (Hearing Officer’s report “included a summary of the testimony given at the hearing,” contained “more than thirty pages . . . outlin[ing] the testimony of each interested party, and Hearing Officer “clearly weighed the testimony presented” and “carefully considered the public’s comments”); *Pickett Ranch, LLC v. Curry*, 2006-NMCA-082, ¶¶ 51-53, 140 N.M. 49 (approving of “thorough” report identifying issues, analyzing findings presented by parties, and “carefully consider[ing] all arguments”). The Hearing Officer’s Report here falls far short of this standard.

Indeed, in its present form, the Hearing Officer's Proposed Reasons and Order makes the WQCC's decision in this Triennial Review susceptible to reversal on appeal as arbitrary and capricious. The positions advocated by NMED are not entitled to any special deference because the NMED carries the same burden as every other party. NMSA 1978, §§ 74-6-9(F), (G) (1967, as amended through 1993) (NMED, as constituent agency, carries same burden as any other person proposing change to existing water quality standards). However, the Hearing Officer's Report completely defers to NMED. With the exception of four introductory paragraphs, portions of the Report relating to Chino Mines, and a few other words here and there, the Proposed Reasons and Order is a verbatim adoption of NMED's entire post-hearing submittal—including not only NMED's "Statement of Reasons," but also the "Legal Authority" and "Development of the Triennial Review" sections of NMED's filing.³ In addition, "Attachment A" to the Proposed Reasons and Order appears to be an exact copy of NMED's Proposed Final Rule. In fact, in Paragraphs 18 and 23 of his Report, the Hearing Officer refers to Attachment A as NMED's—and not his own—"final proposed changes" and "Proposed Final Rule." Appellate courts frown on such verbatim adoption of one party's proposed findings. *See, e.g.,*

³ The Hearing Officer's 85-page Report deviates from NMED's filing in the following respects. First, it relocates NMED's topic titled "Changes to Definitions in 20.6.4.7 NMAC" but nevertheless adopts it verbatim and in its entirety. Second, several paragraphs in Section V (beginning at page 23) concerning a Chino Mines UAA are adopted from Freeport-McMoRan Chino Mines Company's Proposed Statement of Reasons and Closing Legal Argument (Jan. 16, 2016). Third, pages 28-38 contain a single-spaced quotation of NMED's proposed changes to Section 20.6.4.900 NMAC, which is repeated beginning at page 56. Pages 28-38 appear to be an inadvertent insertion, given the fact that they are located in the section of the Hearing Officer's Report providing a statement of reasons for Sections 20.6.4.98 and 20.6.4.99 NMAC. Fourth, the last section, beginning on the bottom of page 75, addresses Chino Mines' petition to add site-specific criteria for copper for certain stream segments located in the Mimbres Closed River Basin. This topic was not addressed in NMED's post-hearing submission.

Bernier v. Bernier, 2013-NMCA-074, ¶ 15 (appellate court “deference wanes when the district court adopts verbatim the prevailing party’s extensive requested findings of fact and requested conclusions of law”); *United Nuclear Corp. v. General Atomic Co.*, 1980-NMSC-094, ¶ 207, 96 N.M. 155 (“[V]erbatim adoption of proposed findings” results in review “with a more critical eye” on appeal); *Ramey Construc. Co., Inc. v. Apache Tribe of the Mescalero Reservation*, 616 F.2d 464, 466, 467 (10th Cir. 1980) (quoting *G.M. Leasing Corp. v. United States*, 514 F.2d 935, 940 (10th Cir. 1975)) (“[T]he mechanical adoption of a litigant’s findings is an abandonment of the duty imposed on trial judges . . . because findings so made fail to ‘reveal the discerning line for decision’”; appellate court reviews findings adopted verbatim “with a more critical eye to insure that the trial court has adequately performed its judicial function”).

The Hearing Officer’s failure to fairly describe the positions taken and evidence presented by all Triennial Review participants, and his verbatim adoption of NMED’s proposed reasons, makes his Report useless for fair, thorough, whole-record WQCC deliberation and decision. The WQCC’s reliance on the Report would subject it to a risk of reversal on appeal because “an agency’s action is arbitrary and capricious if it . . . entirely omits consideration of relevant factors or important aspects of the problem at hand . . . , select[s] and discuss[es] only that evidence which favors [its] ultimate conclusion or fail[s] to consider an entire line of evidence to the contrary.” *Atlixco Coalition*, 1998-NMCA-134, ¶ 24. Put another way, “[a]n action is arbitrary and capricious if it . . . does not result from a sifting process.” *Regents of the Univ. of Cal. v. WQCC*, 2004-NMCA-073, ¶ 35, 94 P.3d 788. Obviously, the Hearing Officer has not engaged in a “sifting process”; nor will the WQCC if it relies on the Hearing Officer’s Report. Further, the record supporting WQCC action must “indicate[] what facts and circumstances were considered and the weight given to those facts and circumstances.” *City of*

Roswell v. WQCC, 1972-NMCA-160, ¶ 16, 84 N.M. 561. The appellate court must know what path the WQCC took through conflicting evidence, the testimony it adopted, and the reasoning it used to reach its conclusions. *Id.*, ¶ 14. To survive appellate review, the WQCC's decisions, and its formal findings or reasons supporting those decisions, must be made upon "the exercise of an independent judgment . . . rather than adopting [the proposed findings] of one of the parties." *Mora v. Martinez*, 1969-NMSC-030, ¶ 6, 80 N.M. 88.

III. CONCLUSION

Clearly, the Hearing Officer's Proposed Findings and Order fails to provide an adequate description of the issues and evidence presented during the Triennial Review hearing. The Hearing Officer's recommendations are not the result of his own independent analysis and decision after sifting through the evidence and the parties' post-hearing submissions. Thus, his Report will not assist the WQCC in its decision-making process because it is not a fair representation of the positions of all of the parties or of the evidence presented during the Triennial Review hearing. Moreover, by ignoring "material issues raised" by SJWC and other parties, the Hearing Officer's Report has "render[ed] [SJWC's] right to be heard illusory." *Atlixco Coalition*, 1998-NMCA-134, ¶ 24.

For the foregoing reasons, SJWC objects to the Hearing Officer's Proposed Findings and Order. SJWC respectfully requests that the Hearing Officer revise his Report and provide a full description and analysis of the issues presented, and the evidence provided, by all Triennial Review participants. In the alternative, SJWC requests that the WQCC strike the Hearing Officer's Proposed Findings and Order and deliberate without reference to or consideration of it.

SJWC's request is in line with action taken by the WQCC during the 1993-94 Triennial Review. There, NMED staff provided the hearing officer with a draft report, including an

*SJWC's Exceptions to Hearing
Officer's Proposed Statement of Reasons
and Final Order*

explanation of the proposed standards, a description of support and opposition to those standards with citations to the record, and proposed recommendations. The hearing officer's report to the WQCC modified NMED's summaries and recommendations. *See generally* June 8, 1994, letter from Susan McMichael, counsel for NMED, to Bill Brancard, and June 8, 1994, letter from William R. Brancard, WQCC counsel, to Judith Espinosa, WQCC Chairwoman (both attached hereto as Exhibit "A"). Apparently, the hearing officer did not receive similar recommendations from the other Triennial Review participants, although the parties did submit "final proposed revisions to the Standards, statements in support of the revisions and comments on the proposed revisions of the other participants." Ex. A at 3. According to WQCC counsel, the hearing officer's receipt of recommendations from NMED "call[ed] into question the independence of the hearing officer's recommendations [and] create[d] the perception that the hearing officer was improperly and unfairly influenced." *Id.* at 2. Counsel for the WQCC and counsel for NMED requested that the WQCC therefore strike the hearing officer's recommendations. *Id.* at 1, 2. On information and belief, the WQCC did strike the hearing officer's report and recommendations.⁴

SJWC asserts that the Hearing Officer's wholesale, verbatim adoption here of NMED's proposed reasons and recommendations provides an equal, if not greater, perception that he has been "improperly and unfairly influenced" by NMED and calls into question "the independence of [his] recommendations," thereby justifying the complete revision—if not striking—of his Report.

⁴ SJWC has been unable to locate a copy of the WQCC order striking the hearing officer's report and recommendations.

Respectfully submitted,

TAYLOR & McCALEB, P.A.

By: 
Jolene L. McCaleb

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served on the following persons

by regular mail and e-mail this 15th day of April, 2016:

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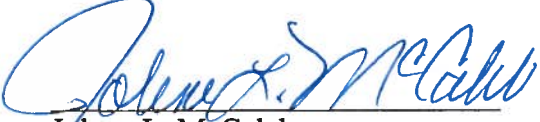
*SJWC's Exceptions to Hearing
Officer's Proposed Statement of Reasons
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June 8, 1994

Bill Brancard, Esq.
 Assistant Attorney General
 Office of the Attorney General
 Post Office Drawer 1508
 Santa Fe, NM 87504-1508

RE: Hearing Officer's Report - 1993 Triennial Review of Water Quality Standards for Interstate and Intrastate Stream Standards in New Mexico

Dear Bill:

It is our understanding that staff members of the Surface Water Quality Bureau provided Mr. Youngblood, the hearing officer for the 1993 triennial review, a draft technical summary to aid the hearing officer in preparation of his report. The technical summary was provided to the hearing officer on a computer disk and included a section by section explanation of the proposed standard, the proponent, support and opposition (including relevant page citations). As a result of your conversation with Kathy Sisneros late Friday afternoon, June 3rd, we learned that the technical summary also included an initial recommendation. The hearing officer was instructed to make his determination independently and to not consult with Bureau staff regarding any portion of the report or issues related to the triennial review. This procedure was strictly followed, and, at no time did staff consult with Mr. Youngblood. The final report contains Mr. Youngblood's final recommendations, and modifies the draft summary in several significant respects.

Nevertheless, we believe that the inclusion of the Bureau's initial recommendations in the technical summary was inappropriate. Therefore, we respectfully request that the Commission strike the recommendations contained in the report, or the entire report as the Commission deems appropriate. We apologize for any inconvenience this may cause the Commission in deliberations.

Sincerely,

SUSAN McMICHAEL
 Assistant General Counsel

cc: New Mexico Water Quality Control Commissioners





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MANIFI TIERRINA
MARIAN MATTHEWS
Deputy Attorney General

June 8, 1994

Judith Espinosa
Chairwoman
Water Quality Control Commission
1190 St. Francis Drive
Harold Runnels Building
Santa Fe, NM 87503

Dear Chairwoman Espinosa:

Re: WQCC: Water Quality Standards Hearing Officer Report

Based upon the facts described below, I must strongly urge that you call a special meeting of the Water Quality Control Commission to consider striking the hearing officer's recommendations submitted in the Commission proceeding on proposed revisions to the Water Quality Standards for Interstate and Intrastate Streams ("Standards").

On May 4, 1994, the hearing officer submitted his report which describes each proposed revision to the Standards with a corresponding recommendation whether to adopt the revision. After hearing a rumor from a representative of one of the parties, I contacted officials in the Environment Department who investigated and confirmed that ED staff had provided the hearing officer with a draft report including recommendations which the hearing officer then modified and submitted.

These actions call into question the independence of the hearing officer's recommendations. If the Commission must have recommendations from a hearing officer in a proceeding as complex and contested as the Standards, then the Commission should expect the recommendations to be unbiased. Even though the hearing officer was allowed to, and did, modify the ED proposed recommendations, this arrangement creates the perception that the hearing officer was improperly and unfairly influenced. Given this situation, I recommend the Commission avoid any appearance of impropriety and strike the recommendations of the hearing officer.

Striking the recommendations of the hearing officer should not delay the planned deliberation of the Commission. Along with the transcript, the Commission has received from the parties, including

ED, final proposed revisions to the standards, statements in support of the revisions and comments on the proposed revisions of the other participants. In addition, if it would assist the deliberation, the Commission could request a copy of the text of proposed revisions that is organized section by section in the Hearing Officer's Report.

Finally, I would like to thank the Environment Department Office of the Secretary and Office of General Counsel who responded immediately to my inquiries and quickly determined the relevant facts. My understanding is that these offices did not order, or even have knowledge of, the preparation of proposed recommendations for the hearing officer.

Please let me know as soon as possible about whether a special meeting can be arranged.

Thank you for all your help in this matter.

Sincerely,

Bill Brancard
WILLIAM R. BRANCARD
Assistant Attorney General
Counsel to the Water Quality
Control Commission

cc: WQCC Members