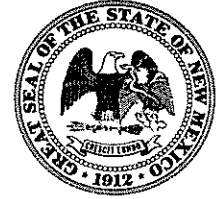


**STATE OF NEW MEXICO  
WATER QUALITY CONTROL COMMISSION**

1190 St. Francis Drive, Room N2150  
Post Office Box 26110  
Santa Fe, New Mexico 87502



**Constituent Agencies**

Environment Department  
Office of State Engineer  
Game and Fish Department  
Oil Conservation Division  
Department of Agriculture  
Department of Health  
State Parks Division  
-Soil and Water Conservation Commission  
Bureau of Geology and Mineral Resources  
Municipal/County Representative  
Members-at Large

Telephone (505) 827-2425 Fax (505) 827-0310

**New Mexico Water Quality Control Commission  
Regular Meeting**

**January 11, 2011**

**9:00 a.m.**

**Wendell Chino Building, Porter Hall  
1220 S. St. Francis Drive  
Santa Fe New Mexico 87502**

**MEMBERS PRESENT:**

James Bearzi	Acting Chair for NM Environment Department
Steve Glass	County of Bernalillo, Municipal/County Representative
Cheryl Bada	State Parks Division
Larry Dominguez	Department of Agriculture
Howard Hutchinson	Soil and Water Conservation Commission
Estevan Lopez	Office of the State Engineer (through Item 7)
Heidi Krapfl	Department of Health
Glenn Von Gonten	Oil Conservation Division (arriving at beginning of Item 4)
Edward Vigil	Member-at-Large
Maxine Goad	Member-at-Large
Harold W. Tso	Member-at-Large

**MEMBERS ABSENT:**

Mike Sloane	Department of Game & Fish
Doug Bland	Bureau of Geology and Mineral Resources

**OTHERS PRESENT:**

**Please see attached sign-in sheets**

Felicia Orth, NMED/OOTS  
Laurie Leibowitz, NMED/OOTS

Stephen Vigil, NM Attorney General's Office  
Melanie Carver, NM Attorney General's Office

The meeting was called to order by Mr. Bearzi at 9:00 a.m.

**Item 1. Roll Call:**

Roll was taken, it was noted that a quorum was present.

**Item 2. Approval of Agenda**

**Action: Mr. Glass moved Commission adoption of the Agenda. Mr. Dominguez seconded.**

The motion passed unanimously.

**Item 3. Approval of November 29-30, 2010 meeting minutes**

**Action: Mr. Vigil moved Commission approval of the November 29-30, 2010 meeting minutes, with minor revisions. Mr. Tso seconded.**

The motion passed unanimously, with Mr. Glass and Mr. Lopez abstaining.

**Mr. Tso moved Commission approval of the December 14-15, 2010 meeting minutes, with a minor revision. Mr. Vigil seconded.**

The motion passed unanimously, with Mr. Lopez abstaining.

**Item 4. Approval of statement of reasons in WQCC 09-13 (R), Proposed Amendments to Dairy Regulations.**

A hearing transcript of the Commission's deliberations on this document was made by Cheryl Arreguin of Kathy Townsend Court Reporters and is available in the office of the Water Quality Control Commission Administrator, New Mexico Environment Department, 1190 St. Francis Drive, Runnels Building Room 2150, Santa Fe, New Mexico 87505.

Mr. Bearzi turned the discussion over to Mr. Glass, who had served as Hearing Officer for the Dairy Rule hearing.

Mr. Glass turned the discussion over to Mr. Vigil, who had prepared the Order and Statement of Reasons.

Mr. Vigil noted that the Governor had issued an Executive Order the week before, and that the publication of the Dairy Rules in the New Mexico Register had been suspended for ninety days as a result.

The Commission then proceeded page by page through the Order and Statement of Reasons, and made minor revisions throughout.

**Action:** Mr. Vigil moved Commission approval of the revised Order and Statement of Reasons. Mr. Tso seconded.

**Roll Call Vote:**

Mr. Bearzi	abstain
Ms. Bada	yes
Mr. Dominguez	no
Mr. Lopez	abstain
Mr. Hutchinson	no
Mr. Von Gonten	abstain
Mr. Tso	yes
Mr. Vigil	yes
Ms. Krapfl	yes
Ms. Goad	yes
Mr. Glass	yes

The motion passed, six votes in the affirmative; two in the negative, with three abstentions.

**Item 5: Initiation of Public Comment Period on Draft Update and Consolidation of the Water Quality Management Plan and Continuing Planning Process.**

**(Formerly Item 7, this and other agenda items were moved up on the agenda to accommodate the absence of Counsel required for agenda Item 5).**

Pam Homer, Standards Coordinator for the Surface Water Bureau, presented the draft update and proposed consolidation. The public comment period begins this week and extends to the end of February and two public meetings are planned. Neither document has been updated in several years, notwithstanding many related developments. The draft documents are being posted on the Bureau website. After the end of the public comment period, the Bureau will return to the Commission for a hearing prior to approval. Ms. Homer answered several questions from Commissioners.

**Action:** No action requested or taken.

**Item 6. Approval of Open Meetings Act Resolution (formerly Item 9)**

Ms. Carver presented the draft Open Meetings Act Resolution. Mr. Bearzi suggested that express mention be made of electronic posting on the Department website. Mr. Tso suggested posting at the District Offices. Ms. Orth observed that the Commission Administrator maintains two mailing lists for anyone interested in receiving the agenda every month (hard copies and electronically).

Mr. Hutchinson observed that previous Resolutions had included a section on participation by telephone for those Commissioners who could not attend in person. Ms. Carver drafted the appropriate language, and the Commission approved her reading of it.

**Action: Mr. Tso moved Commission approval of the revised Open Meetings Act Resolution, Mr. Lopez seconded.**

Motion passed unanimously.

**Item 7. Consideration of Motion to Dismiss for untimely appeal in WQCC 10-12 (CO), NMED Water and Wastewater Management Division v. Mesa Oil, Inc. (formerly Item 8)**

Mr. Bearzi recused himself from this item, and turned the discussion over to Mr. Glass. Mr. Glass invited counsel to summarize their arguments.

Division counsel Jennifer Hower of the Department's Office of General Counsel summarized the basis for the Division's Motion.

Louis Rose, counsel for Mesa Oil, summarized the Respondent's argument in opposition to the Motion.

Both counsel answered questions from Commissioners. Commission Counsel Carver offered her recommendation to the Commission, which was to deny the Motion to Dismiss.

**Action: Mr. Hutchinson moved Commission denial of the Motion, Mr. Dominguez seconded.**

Motion passed unanimously, with Mr. Bearzi abstaining.

**Item 8. Presentation and consideration of Proposed Settlement Agreement in WQCC 03-12 (A) and 03-13 (A), Appeal of Supplemental Discharge Plan for Closure, Tyrone mine, DP-1341 (formerly Item 5)**

Mr. Bearzi recused himself from this item, and turned the discussion over to Mr. Glass. Sally Malave sat as Commission Counsel for this Item only.

John Kelly, Counsel for Tyrone and Charles de Saillan, Counsel for the Water and Wastewater Management Division, presented the parties' Proposed Settlement Agreement, and a draft Stipulated Final Order for the Commission's consideration.

As part of their presentation, Counsel introduced several people who had worked on the matter, and offered the history of the appeal of the Supplemental Discharge Plan.

Counsel proceeded through the proposed documents, and answered questions from Commissioners. Ms. Malave clarified that she was being authorized to sign onto the Joint Motion on behalf of the Commission. Mr. Glass commended the parties for their work on resolving the appeal, and expressed the Commission's gratitude.

**Action:** **Ms. Bada moved Commission approval of the Proposed Settlement and draft Stipulated Order. Mr. Hutchinson seconded.**

Motion passed unanimously, with Mr. Bearzi, Ms. Krapfl and Mr. Tso abstaining.

**Item 9. Hearing in WQCC 10-10 (R), Petition for Rulemaking for Procedures Governing State Certification of Federal Permits under the Clean Water Act, NMED, Petitioner (formerly Item 6)**

Mr. Bearzi, serving as Hearing Officer, opened the hearing.

Appearances were made by Charles de Saillan, Counsel for the Water and Wastewater Management Division, Megan Anderson for the Western Environmental Law Center, and Louis Rose, as an individual.

Mr. Dominguez asked whether the Commission's consideration of this Rulemaking Petition contravened the Governor's Executive Order. Ms. Orth stated that when the Executive Order was received, she had approached the Acting Cabinet Secretary, Mr. Solomon, who had approached the Governor's Office with a request for a case-by-case approval to proceed with both the Dairy Rule Statement of Reasons and the Proposed Procedures Governing State Certification of Federal Permits under the Clean Water Act. The Governor's Office approval was granted for both items.

A transcript of the hearing was made by Cheryl Arreguin of Kathy Townsend Court Reporters and is available in the office of the Water Quality Control Commission Administrator, New Mexico Environment Department, 1190 St. Francis Drive, Runnels Building Room 2150, Santa Fe, New Mexico 87505.

**Action:** **Mr. Bearzi, reflecting the consensus of the Commission, acted to recess the hearing, keep the record open, continue the hearing at the next regular Commission meeting, and deliberate at the end of the hearing.**

**Item 10. Other business**

Dan Dolan stated that Cattle Growers had filed a motion for stay of the ONRW designations on the previous Friday, January 7, believing that it would be placed on the January 11 agenda, but that it was not on the agenda for some nefarious reason.

Ms. Carver cautioned Mr. Dolan to avoid discussing any motion not on the agenda.

Mr. Bearzi observed that the agenda does not include a public comment period. Any motion would be placed on an agenda after other parties had an opportunity to respond to the motion. Mr. Hutchinson disagreed with Mr. Bearzi's statement,

stating that a motion was made to the Commission; the Commission decides whether there is merit to the motion, and whether to schedule a hearing on it.

Ms. Carver stated that the motion was filed late Friday afternoon, that the Open Meetings Act rule requires 10 days prior to adding new items, that as a matter of due process, the filing of a motion requires providing other parties an opportunity to respond. It is not procedurally appropriate to place on the agenda a motion filed late Friday afternoon before a meeting the following Tuesday morning.

Mr. Hutchinson noted that if the Commission does not act on the motion within 90 days it is considered denied. Ms. Carver noted that the Chair could call a special meeting in accordance with its Open Meetings Act Resolution. Mr. Bearzi asked if any Commissioner had seen the Motion; Mr. Hutchinson was the only one who had seen the motion.

Ms. Orth, Acting Administrator, noted that the Administrator's practice has always been to send a motion to the Commission after the responses and replies have been filed as well.

Mr. Hutchinson stated that he believed a hearing officer needed to be appointed and an order needed to be put into place to set out subsequent procedure.

At Mr. Bearzi's invitation, Ms. Orth spoke to the Commission's motion procedures, which provide a timeline for responses and replies without a special order, and outlined a few ways in which the Cattle Growers' Motion could be heard on its merits notwithstanding its absence from the January agenda. She stated that she had forwarded the Motion to the Attorney General's Office when it was filed and had been advised by two Commission counsel to place the Motion on the next agenda.

Mr. Hutchinson made a motion to hold the ONRW order in abeyance in consideration of the Governor's Executive Order.

Ms. Carver stated that any action taken on an item not on the agenda would be an invalid action. Mr. Bearzi noted that it didn't seem the Commission could take any action at this point. Mr. Dominguez asked what could be handled under "other business." Ms. Carver noted that purely administrative matters could be handled there; matters of interest to the public could not be.

Mr. Hutchinson noted that agenda items had been added with less than 10 days notice before. Mr. Dominguez noted that a special meeting would probably have to be called so as not to toll the 90-day deadline for default judgment. The Commission's practice of not meeting during the legislative session should not interfere with its responsibilities to act on matters before it.

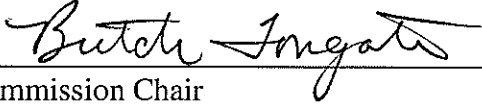
Ms. Orth clarified that her earlier statements were meant as a commitment—acting either as continuing ONRW Hearing Officer or as Acting Commission Administrator, she would take action to assure that the Cattle Gower's motion was heard on its merits, either by extracting a written waiver of the 90-day rule from the other parties, or by scheduling a Commission meeting within the 90 days.

**Item 11. Next meeting:**

April 12, 2011.

**Item 12. Adjournment:**

The Chair adjourned the meeting.

  
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Commission Chair