Minutes of the
New Mexico Water Quality Control Commission
Regular Meeting
April 5, 2011
9:00 a.m.
New Mexico State Capitol Building Room 307
490 Old Santa Fe Trail
Santa Fe New Mexico 87501

MEMBERS PRESENT:

Raj Solomon Chair
Dave Gatterman State Parks Division
Larry Dominguez Department of Agriculture
Mike Sloane Department of Game & Fish
Doug Bland Bureau of Geology and Mineral Resources
D.L. Sanders Office of the State Engineer
Heidi Krapf Department of Health
Daniel Sanchez Oil Conservation Division
Steve Glass County of Bernalillo, Municipal/County Representative
Edward Vigil Member-at-Large
Maxine Goad Member-at-Large
Harold W. Tso Member-at-Large

OTHERS PRESENT:

Please see attached sign-in sheets

Felicia Orth, NMED/OOTS
Laurie Leibowitz, NMED/OOOGC
Melanie Carver, NM Attorney General’s Office

The meeting was called to order by Mr. Solomon 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: The Commission discussed switching Items 6 and 7. Mr. Tso moved Commission adoption of the Agenda as amended, moving Item 7, motion for hearing on DIGCE’s Motion to Stay in WQCC 09-13 (R) because a Stipulated Motion to Stay had been filed, to Item 6. Mr. Gatterman seconded. The motion passed unanimously.

Item 3.  Approval of January 11, 2011 meeting minutes.

Action: Meeting minutes were not available and will be taken up at the next WQCC meeting.


Action: After Commission discussion, Mr. Glass moved to set hearing for the next WQCC meeting in May with NMED documents submitted by the end of next week (April 15, 2011). Mr. Gatterman seconded. The motion passed unanimously.


Action: A recap of the hearing was given by Mr. de Saillan. After Commission discussion, Mr. Vigil moved to close the record and adopt the rules as amended and agreed to by Mr. de Saillan, attorney for NMED, Ms. Anderson and Ms. Conn, attorneys for Amigos Bravos, and Louis Rose. Mr. Glass seconded the motion.

Roll Call Vote:

<table>
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<tr>
<th>Name</th>
<th>Vote</th>
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<tbody>
<tr>
<td>Mr. Solomon</td>
<td>yes</td>
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<tr>
<td>Mr. Sanders</td>
<td>yes</td>
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<tr>
<td>Mr. Sanchez</td>
<td>yes</td>
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<tr>
<td>Mr. Gatterman</td>
<td>yes</td>
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<tr>
<td>Mr. Glass</td>
<td>yes</td>
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<tr>
<td>Mr. Dominguez</td>
<td>yes</td>
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<tr>
<td>Mr. Sloane</td>
<td>yes</td>
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<tr>
<td>Mr. Bland</td>
<td>abstain</td>
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<tr>
<td>Ms. Krapfl</td>
<td>yes</td>
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Mr. Tso  yes
Ms. Goad  yes
Mr. Vigil  yes

The motion passed, eleven votes in the affirmative; one abstention.

Item 6. (formerly Item 7). Motion Hearing—DIGCE’s Motion to Stay in WQCC 09-13 (R), Amendments to 20.6.2 NMAC, Dairy Regulations. T.J. Trujillo and Dalva Moellenberg for Movants; Chuck Noble and Misty Braswell, MNMED/OGC; Jonathan Block and Bruce Frederick for the Coalition; Melanie Carver, NM Atty. General’s Office, Commission Counsel.

Action: Mr. Noble distributed Stipulated Motion to Stay hearing agreed to by all parties. The Commission discussed with parties repercussions of delaying the motion hearing. Mr. Glass moved to table the motion hearing. After discussion, Mr. Glass amended his motion and moved to delay motion hearing until the July WQCC meeting. Mr. Tso seconded the motion. After further discussion the motion was withdrawn and Mr. Sanders moved to delay consideration of the Motion to Stay until the June WQCC meeting. Mr. Dominguez seconded the motion.

Roll Call Vote:
Mr. Solomon  yes
Mr. Sanders  yes
Mr. Sanchez  yes
Mr. Gatterman  yes
Mr. Glass  yes
Mr. Dominguez  yes
Mr. Sloan  yes
Mr. Bland  yes
Ms. Krapfl  yes
Mr. Tso  no
Ms. Goad  yes
Mr. Vigil  yes

The motion passed, eleven votes in the affirmatives; one in opposition.


Action: The Commission discussed Motion to Stay and Motion to Strike and Motion to Continue. The Commission heard from attorneys for the River Groups and WildEarth Guardians to discuss the Motion to Strike the Cattle Grower’s Brief.
Mr. Glass moved to Strike Cattle Grower's Brief. Mr. Sloane seconded. The Commission had extensive discussions on how to proceed and repercussions of various options on how to proceed given by Commission Counsel.

The Commission held further discussions on how to proceed. Mr. Sanders moved to allow the River Groups and WildEarth Guardians to file a sur-reply to the Cattle Grower's Brief and to continue the proceeding until that time and to proceed with the motion hearing on the Motion to Stay. Mr. Dominguez seconded. The Commission held further discussions and Mr. Sanders withdrew his motion.

Following further discussion on how to proceed, Mr. Sanders moved to continue the proceeding and to allow for witnesses with a scheduling order providing an opportunity for the River Groups and WildEarth Guardians to file a sur-reply to the Cattle Grower's Brief, the scheduling procedure to include dates filings are due and limiting the evidence to the established prongs for a stay.

The Commission held further discussions and agreed to break for 15 minutes to give all parties an opportunity to agree to a scheduling order outlined by Commission Counsel.

After break the Commission further discussed options on how to address Motion to Strike by River Groups and WildEarth Guardians and the late filing by the Cattle Growers. The River Groups and WildEarth Guardians discussed reasons for their Motion to Strike. There was further Commission discussion of options on how to address the Motion to Strike and options for sanctions and/or for the late filing by the Cattle Growers. Legal options were given by Commission Counsel.

A vote was taken on Mr. Glass's motion:

Roll Call Vote:
Mr. Solomon no
Mr. Sanders no
Mr. Sanchez no
Mr. Gatterman no
Mr. Glass yes
Mr. Dominguez no
Mr. Sloan yes
Mr. Bland yes
Ms. Krapfl yes
Mr. Tso recuse
Ms. Goad yes
Mr. Vigil no

The motion did not pass, six votes in opposition; five votes in the affirmative; and one recusal.
Mr. Sanders moved to adopt Commission Counsel’s Scheduling Order, set forth as follows:

1. Hearing on Motion to Stay to be held May 10, 2011 and completed on May 10, 2011.
2. NMED, WildEarth Guardians, and River Groups may respond to the Cattle Growers Brief by April 29, 2011.
3. Exhibit and Witness lists, Demonstrative props, and Exhibits are due by all parties by April 22, 2011.
4. Rebuttal Witnesses and Exhibits are due by all parties by April 26, 2011.
5. Service is to be by email to all parties.
6. If any of the deadlines are missed by any of the parties, documents will be excluded and opportunity to respond is excluded.
7. If a continuance is requested by any party, that party concedes its argument.
8. The scope of testimony is limited to stay prongs 2, 3, and 4, and stay prong 1 is not open to new evidence or new witnesses as set forth in Section 502.B of the rulemaking hearing guidelines.
9. Argument addressing Prong 1 is limited to a demonstrative prop that cites to the record and is due April 22, 2011.
10. All evidence and exhibits are to contain citations to the record.
11. Objections to any evidence and exhibits will be heard at the hearing.
12. No other written documents will be allowed.
13. Mr. Sanders will serve as Hearing Officer.

Mr. Dominguez seconded the motion.

Roll Call Vote:
Mr. Solomon   yes
Mr. Sanders   yes
Mr. Sanchez   yes
Mr. Gatterman yes
Mr. Glass     no
Mr. Dominguez yes
Mr. Sloan     no
Mr. Bland     no
Ms. Krapfl    no
Mr. Tso       abstain
Ms. Goad      abstain
Mr. Vigil     yes

The motion passed, six in the affirmative; four in opposition; and two abstentions.
Item 8. Other business.

None.

Item 9. Next meeting:

May 10, 2011

Item 10. Adjournment.

The Chair adjourned the meeting.

[Signature]
Commission Chair