

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

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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

New Mexico Water Quality Control Commission Meeting

April 13-16, 2010

9:00 a.m.

New Mexico State Capitol Building Room 307

490 Old Santa Fe Trail

Santa Fe New Mexico 87505

MEMBERS PRESENT:

Sarah Cottrell	Acting Chair
Cheryl Bada	State Parks Division
Larry Dominguez	Department of Agriculture
Howard Hutchinson	Soil and Water Conservation Commission
Steve Glass	County of Bernalillo, Municipal/County Representative (arrived 1:15 p.m.)
Doug Bland	Bureau of Geology and Mineral Resources
Brad Jones	Oil Conservation Division
Greg Lewis	Office of the State Engineer
Heidi Krapfl	Department of Health
Mike Sloane	Department of Game & Fish
Maxine Goad	Member-at-Large
Edward Vigil	Member-at-Large
Joseph Chavarria	Member-at-Large
Harold W. Tso	Member-at-Large

MEMBERS ABSENT:

Mr. Glass had vehicle problems and was unable to attend the Commission's morning session.

OTHERS PRESENT:

Please see attached sign-in sheets for meeting attendance information.

Adrian Terry, Asst. AG
Zachary Shandler, Asst. AG, Board Counsel

Joyce Medina, NMED

The meeting was called to order by Ms. Cottrell at 9:00 a.m.

Item 1. Roll Call:

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

Item 2. Approval of Agenda

The Chair noted the removal of Agenda Item 6, WQCC 10-04 (A), Request for Order Hearing and Answer to Compliance Order. Mr. Mendez explained that the Department had withdrawn its Compliance Order in this case.

Action: Mr. Tso moved Commission adoption of the Agenda as amended. Mr. Sloane seconded. The motion passed unanimously.

Item 3. Approval of the meeting minutes of March 9, 2010.

Action: Ms. Bada moved Commission approval of the March 9, 2010 meeting minutes. Mr. Hutchinson seconded. The motion passed unanimously.

Mr. Hutchinson requested that election of a Commission Chair be an item placed on the May 11, 2010 agenda.

Item 4. Request for hearing in re: WQCC 10-02 (R), Amendments to 20.1.3 NMAC, WQCC regulations. Jennifer Hower, NMED/OGC.

Ms. Hower explained the need to coordinate Commission regulations with New Mexico statutory provisions. She requested that a hearing in this case be set on the July 13, 2010 agenda.

Mr. Hutchinson asked who the Department had notified of the pendency of this request for rule changes and whether anyone who had been notified responded. Ms. Hower noted that attorneys who frequently appear before the Commission had been included in the rule development process and that a number of them had responded with suggested revisions. She went on to state that several of the suggestions made by outside parties were incorporated in the final document.

Action: Mr. Vigil moved that the Commission set the hearing in WQCC 10-02 (R) on the July 13, 2010 agenda and that the Commission Chair be the designated Hearing Officer. Mr. Hutchinson seconded.

The motion passed unanimously.

Item 5. Request for Order Hearing and Answer to Compliance Order in re: WQCC 10-03 (A), I & W, Inc., Petitioner, Thomas Hnasko, Esq., Hinkle Law Firm for Petitioner.

- a. Motion to Dismiss Request for Order Hearing in WQCC 10-03 (A), Gail MacQuesten, NMEMNRD/OGC.**
- b. I & W Motion to Quash Purported Compliance Order in WQCC 10-03 (A). Thomas Hnasko, Esq., Hinkle Law Firm for Respondent.**

Ms. MacQuesten, representing the Oil Conservation Division (OCD) of the New Mexico Energy, Minerals and Natural Resources Department set out the extensive background as well as the chronology of events preceding I & W, Inc.'s Request for Order Hearing and Answer to Compliance Order. Ms. MacQuesten noted that the contentious issue in this matter was I & W's failure to meet a WQCC filing deadline. She pointed out that Mr. Hnasko's failure to properly file I & W's Request for Order Hearing and Answer to Compliance Order was the underlying issue. She explained the processes used by the Division in issuing compliance orders and stated that all procedures, as well as specific directions regarding steps to be taken in order to comply with time constraint filings were contained in the twenty-five page Compliance Order issued January 21, 2010, by the Division. Ms. MacQuesten rejected I & W's attorney's contention that it was incumbent upon OCD to shepherd I & W's filing in the proper venue within the thirty day time period.

She asked that the Commission grant the OCD's Motion to Dismiss.

Mr. Hnasko, representing I & W, Inc. stated that the appeal process of constituent agency cases to the WQCC was an unusual one. He went on to say that he would present what he considered to be the common sense approach regarding what had actually happened with respect to this matter. He discussed the ramifications of forfeiture by his client of approximately three million dollars in penalties without the benefit of a hearing. He noted that, in his view, Ms. MacQuesten had misrepresented the facts in her characterization of the events surrounding the filing. He mentioned that he considered the filing of a case with the WQCC under an OCD case heading and case number difficult to understand and that the courier had very likely become confused with respect to where the document should have been filed and had been induced by OCD to file it with the Division. He stated that the original Request was filed with the OCD prior to the actual due date so in fact was an early filing and should not be considered to be in default. He discussed at length the chronology of events noting in particular the forfeiture and default date issues. He further expressed his dismay that the OCD staff did not contact him and apprise him of the filing date problems. Additionally, he mentioned that in his opinion, the way the matter has been handled does not conform with the more collegial manner in which law is practiced in New Mexico and professional courtesy by Ms. MacQuesten should have been extended to him.

He requested that the Commission deny the OCD's Motion to Dismiss.

Rebuttal positions by the parties followed.

A lengthy discussion among the parties, the Commission and the Commission's counsel was held.

There was a brief discussion relating to party settlement negotiation possibilities, future action by the Commission as well as the ramifications of tabling this agenda item.

Action: Mr. Vigil moved that the Commission table WQCC 10-03 (A) in its entirety until the May 11, 2010 meeting in order to give the parties additional time to negotiate settlement of the case.

Mr. Sloane seconded.

The motion passed unanimously.

Item 6. Removed from the Agenda.

Item 7. Approval of final draft TMDL Middle Rio Grande Watershed, San Marcial to Angostura. Heidi Henderson, NMED/SWQB.

Ms. Henderson noted for the Commission the EPA requirements relating to TMDLs. She then set out the condition of the relevant areas in the draft document. She provided additional information relating to interested party notification processes as well as noting that significant changes were made in the TMDL as a result of public comments in response to the notifications.

There was a brief Commission discussion.

Action: Mr. Sloane moved that the Commission approve the final draft TMDL for the Middle Rio Grande Watershed, San Marcial to Angostura. Mr. Lewis seconded.

The motion passed unanimously.

Following a brief scheduling discussion, the Chair recessed the Commission for lunch.

The meeting reconvened at 1:00 p.m.

Item 8. Final approval of the State of New Mexico 2010-2012 Integrated Clean Water Act §303 (d)/§305 (b) Report and List of Assessed Surface Waters. Lynette Guevara, NMED/SWQB.

Ms. Guevara explained the purpose of preparing the Integrated Report and its use in reporting the assessment of water quality as well as other significant water issues such as the development of TMDLs. She noted a number of water bodies that were included in the list and explained in detail the Department's activities with respect to compiling the report.

The Chair asked for public comment relating to the Report.

Rachel Conn, representing Amigos Bravos, stated that Amigos Bravos had privately developed test

results that differed from those set out in the Integrated Report. She explained the areas in which Amigos Bravos' results were at odds with the Department's. Additionally, she noted that in her view the Report is quite difficult to understand and that it would be helpful if a simplified document could be created.

Ms. Guevara responded to Ms. Conn's comments regarding test result issues. She also noted that the Department is working on simplifying the Report document.

There was Commission discussion with Department staff regarding the Report, its usefulness, focus and the ramifications of its content. Additionally, the discussion extended to issues relating to toxic elements in the tissue of fish taken from New Mexico waters.

Action: Mr. Glass moved Commission approval of the New Mexico 2010-2012 Integrated Clean Water Act §303 (d)/§305 (b) Report and List of Assessed Surface Waters. Mr. Tso seconded.

The motion passed unanimously.

Item 9. Hearing in re: WQCC 09-13 (R) Proposed Amendments to 20.6.2 NMAC Dairy Rules. Adolfo Mendez, Asst. General Counsel and Chuck Noble, Asst. General Counsel, NMED/OGC; Dalva Moellenberg, Esq. and T. J. Trujillo, Esq., Gallagher & Kennedy, appearing for DIGCE; Bruce Frederick, Esq., NMELC, appearing for Amigos Bravos, Caballo Concerned Citizens, Food and Water Watch and the Sierra Club, Rio Grande Chapter.

Kathy Townsend Court Reporters transcribed the hearing. All Notice of Intent to Present Technical Testimony were filed and are available for review, as well as public comments correspondence and the hearing transcript 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.

The hearing recessed at 5:15 p.m. on Tuesday, April 13, 2010 to be reconvened on April 14, 15 and 16, 2010. On April 16, 2010, the hearing was recessed and in the late afternoon and the meeting reconvened. See Item 10 below.

Item 10. Other business

There was Commission discussion on Friday, April 16, 2010 relating to the reconvening of the WQCC 09-13 (R), the dairy regulations hearing. It was agreed that the hearing would reconvene on May 6, 7, 10, one-half day on May 11 (following the Commission's regular meeting) and on May 13, 2010.

Item 11. Next meeting: May 11, 2010, 9:00 a.m., Location: State Capitol Room 317, 490 Old Santa Fe Trail, Santa Fe, NM 87501.

Item 12. Adjournment

Action: The meeting was adjourned by the Chair.

Signature on File

Sarah Cottrell, Acting Chair