Minutes of the
New Mexico Water Quality Control Commission
Regular Meeting
May 10, 2011
9:00 a.m.
New Mexico State Capitol Building Room 307
490 Old Santa Fe Trail
Santa Fe New Mexico 87501

MEMBERS PRESENT:

Butch Tongate
Acting Chair, Environment Department
Dave Gatterman
State Parks Division
Larry Dominguez
Department of Agriculture
Mike Sloane
Department of Game & Fish
Doug Bland
Bureau of Geology and Mineral Resources
Clark Taylor
Soil and Water Conservation Commission
D.L. Sanders
Office of the State Engineer (arrived at 10 a.m.)
Heidi Krapfl
Department of Health
Edward J. Hansen
Oil Conservation Division
Steve Glass
County of Bernalillo, Municipal/County Representative
Edward Vigil
Member-at-Large

MEMBER ABSENT:

Harold Tso
Member-at-Large

OTHERS PRESENT:

Please see attached sign-in sheets

Felicia Orth, NMED/OOTS
Laurie Leibowitz, NMED/OOGC
Melanie Carver, NM Attorney General’s Office
The meeting was called to order by Mr. Tongate at 9:00 a.m.

**Item 1. Roll Call.**

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

**Action:** Chair Tongate recognized former Commissioner Maxine Goad, who stated that it had been an honor and a privilege to serve on the Water Quality Control Commission, and offered her thanks. Commissioner Glass acknowledged the service that former Commissioner Goad had offered the Commission over her tenure, noting that she brought a wealth of historical knowledge, an amazing grasp of the issues, and that she’ll be sorely missed. He offered the Commission’s thanks.

**Item 2. Approval of Agenda.**

**Action:** Mr. Sloane moved Commission adoption of the Agenda. Mr. Gatterman seconded the motion. The motion passed unanimously.

**Item 3. Approval of January 11, 2011 meeting minutes; approval of April 5, 2011 minutes.**

**Action:** Mr. Glass moved adoption of the January 11, 2011 meeting minutes. Mr. Gatterman seconded the motion. The motion passed unanimously.

**Action:** Mr. Glass moved adoption of the April 5, 2011 meeting minutes with minor revisions. Mr. Sloane seconded the motion. The motion passed unanimously.


**Action:** Eric Ames, Pam Homer, and James Hogan presented NMED’s request for approval of updated and consolidated Water Quality Management Plan and Continuing Planning Process to the Commission. NMED answered questions from the Commission. Mr. Tongate asked for public comment. Rachel Conn, representing Amigos Bravos, presented written and oral testimony to the Commission on the proposed hydrology protocol. NMED addressed Amigos Bravos comments and answered further questions from the Commission. Jon Klingel provided written and oral testimony to the Commission. NMED addressed Mr. Klingel’s comments and answered further questions from the Commission. Mr. Sloane moved to adopt NMED’s updated and consolidated Water Quality Management Plan and Continuing Planning Process as presented with minor edits. Mr. Sanders seconded the motion. The motion passed unanimously.
Item 5. Approval of Statement of Reasons in WQCC 10-10 (R), Petition for Rulemaking for Procedures Governing State Certification of Federal Permits under the Clean Water Act, NMED, Petitioner. Melanie Carver, NMAGO.

Action: Mr. Glass moved to adopt the Statement of Reasons as presented. Mr. Sloane seconded the motion. The motion passed unanimously with Mr. Bland, Mr. Taylor, and Mr. Hansen abstaining.


Action: Extensive discussion among Counsel for the parties and Commissioners related to allowable testimony, witnesses, and exhibits. The Hearing Officer, Mr. Sanders, ruled that several statements contained within the Cattle Grower’s exhibits would be allowed as statements for the purpose of public comment only and would otherwise be given no probative or evidentiary value. The Hearing Officer distributed copies of the Cattle Grower’s Docketing Statement filed with the Court of Appeals on April 18, 2011 to the Commissioners.

All witnesses were sworn in, and the Cattle Growers made their presentation in support of a stay. The hearing proceeded with discussion, objections, cross-examination, and redirect. Ms. Fox moved for the equivalent of a “directed verdict” based on the Cattle Growers’ inability to meet the threshold for proving irreparable harm, and asked the Commission to deny the stay without having to hear from all the other witnesses, who would have testified in opposition to a stay. Mr. Schlenker-Goodrich and Ms. Ruscavage-Barz concurred. Ms. Carver, Commission attorney advised the Commission of its options and the broad scope of its discretion.

Mr. Sloane moved to dismiss the Cattle Growers’ Motion to Stay based on a failure to meet the threshold of irreparable harm. Mr. Bland seconded the motion.

Roll Call Vote:
Mr. Tongate yes
Mr. Sanders yes
Mr. Hansen yes
Mr. Gatterman yes
Mr. Glass yes
Mr. Dominguez no
Mr. Sloane yes
Mr. Taylor no
Mr. Bland yes
Ms. Krapf yes
Mr. Vigil no
The motion passed, eight votes in the affirmatives; three in opposition.

[No written transcript was made of this motion hearing, but an audio-recording of the hearing in its entirety may be obtained from the Commission Administrator.]

Item 7. Other business.

Action: Commissioner Glass noted that last week the New Mexico Municipal Environmental Quality Association hosted Secretary Martin and Dr. Davis and Andy Edmondson at a meeting, and it was suggested to the Secretary that a monthly update to both the Commission and to the EIB on enforcement actions taken by the Department on behalf of the Commission or the EIB might be useful. Commissioner Glass recommended that the Commission ask the Department for a five minute summary of enforcement actions at each meeting. Chair Tongate said he thought that was a great recommendation and that he would ask the Commission Administrator to put that on the agenda.

Item 8. Next meeting:

June 14, 2011

Item 9. Adjournment.

The Chair adjourned the meeting.

[Signature]
Commission Chair