

**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
State Parks Division
Soil and Water Conservation Commission
Bureau of Geology and Mineral Resources
Municipal/County Representative
Member's -at Large

**Minutes of the
New Mexico Water Quality Control Commission Meeting
January 10, 2006
9:00 a.m.**

**New Mexico Water Quality Control Commission meeting
PERA Building, Apodaca Hall, Santa Fe, New Mexico.**

MEMBERS PRESENT:

Derrith Watchman-Moore	Acting Chair, New Mexico Environment Department
Cheryl Bada	State Parks Division
Maxine Goad	Member-at-Large
Steve Glass	City of Albuquerque – Municipal/County Representative
Edward Vigil	Member-at-Large
Howard Hutchinson	Soil and Water Conservation Commission
Wayne Price	Oil Conservation Division (for Mark Fesmire)
Peggy Johnson	Bureau of Geology and Mineral Resources
Tim Darden	Department of Agriculture
Mike Sloane	Department of Game & Fish
Fred Lujan	Member-at-Large
Doug Murray	State Engineer's Office

MEMBERS ABSENT:

None

OTHERS PRESENT:

Zach Shandler, WQCC Counsel	Felicia Orth, NMED
Bill Olson, NMED	Anne Wagner, Molycorp
Sally Worthington, NMED	Ned Kendrick, Montgomery & Andrews
Steve Canton	Dal Moellenberg, Gallagher & Kennedy
Tannis Fox, OGC/NMED	Daniela Berardelli, Rhino Environmental
Jennifer Ickes, NMED	

Derrith Watchman-Moore, Deputy Chair, called the meeting of the WQCC to order at 9:00 a.m.

Item #1 Roll Call:

The Commission Administrator took roll and noted a quorum was present.

Item #2 Approval of amended Agenda.

ACTION: **Commissioner Hutchinson moved to approve the amended agenda. Commissioner Sloane seconded. Motion carried unanimously.**

Item #3 Approval of the January 10, 2006 Meeting Minutes.

The Commissioners noted revisions to be made in the meeting minutes.

ACTION: **Commissioner Sloane moved to approve the January 10, 2006 minutes as amended. Commissioner Hutchinson seconded. The motion carried unanimously.**

Item #4 Request for Hearing In the Matter of the Appeal of the Issuance of Discharge Permit Renewal and Modification, Rhino Environmental Services Landfarm, DP-994, WQCC 05-13 (P). (Appearing: Nancy Simmons, Colonias Development Council, Petitioner; Daniel Bryant, Otero County; Danielle Berardelli, Rhino Environmental Services, Appellant; Tannis Fox, NMED)

The Chair noted that Mr. Bryant would appear by telephone in this matter. Due to difficulties establishing a functional telephone connection with Mr. Bryant, on advice of Commission Counsel the Chair moved to the next agenda item.

**Item #5 [formerly Item #6]
Adoption of Statement of Reasons for Valle Vidal Being Named an Outstanding National Resource Water. (Appearing: Zach Shandler)**

Mr. Shandler had emailed to the Commission a draft Statement of Reasons, and had received comments from Commissioners regarding the Statement. Commissioner Hutchison noted that he had earlier stated that the economic information presented did not meet the level required under the credible scientific data provision of the Water Quality Act; it should be included mostly for the purpose of future petitions meeting that standard. Following discussion, Mr. Shandler stated that he would incorporate language indicating that the economic benefit data was not peer reviewed and did not satisfy the credible scientific data provision and that the only reason it was satisfactory was because there was no contrary testimony. Mr. Shandler pointed out that the Court of Appeals might soon give the Commission greater clarity with respect to the credible scientific data standard in the Triennial Review appeal. Discussion continued regarding whether the definition of credible scientific data should only include data that has been peer reviewed. Mr. Shandler suggested this issue might be something the Commission would want to discuss in a more in-depth manner at a later time.

Commissioner Hutchison asked for clarification of the Motion to approve the petition. Mr. Shandler provided such clarification, stating that the Motion was to approve the petition on all three grounds, 20.6.4.9 b.1, b.2 and b.3 NMAC. Discussion continued regarding revisions in specific text language.

ACTION: Commissioner Sloane moved for adoption of the Order of Statement of Reasons for amendments to the standards for designation of the waters within the Valle Vidal as Outstanding National Resource Waters as revised by the Commission. Commissioner Hutchison seconded the motion. The motion passed unanimously.

Item #4 Revisited

The Chair requested a status report on Mr. Bryant's telephonic appearance relating to Item #4. It was determined that the logistics of the telephone call from Mr. Bryant were not working out. The Chair then asked for comments from Tannis Fox, Office of the General Counsel, NMED, regarding her conversation with Mr. Bryant. Ms. Fox had spoken to Mr. Bryant about the issue before the Commission. She stated that all of the parties had worked out a proposed scheduling order for the Commission's consideration. The Department will file any dispositive motions by February 15, 2006; responses would be due March 15, 2006; and the Commission would hear arguments during its April meeting. In the event the motions are denied, a hearing would be held at the June 2006 meeting under new legislation: appeals on permits are no longer reviewed on evidence presented during a hearing but on the original record. A briefing schedule is also set forth in the proposed Scheduling Order. Ms. Fox stated that she had received concurrence from counsel for Colonias and Mr. Bryant, counsel for Otero County.

The Chair called upon Ms. Daniela Berardelli, who attended the meeting on behalf of Rhino Environmental. Ms. Berardelli stated that she agreed with the scheduling order.

Mr. Shandler and the Commission discussed the logistics of any hearing on the record. The Chair would act as the presiding officer. The parties, if they wish, will provide a stenographer.

Commissioner Sloane asked whether the hearing should be held in southern New Mexico. Mr. Shandler stated that he would have to review his notes to definitively answer that question.

ACTION: Commissioner Sloane moved to adopt the request for hearing as presented. Commissioner Bada seconded the motion. The motion passed unanimously.

**Item #6 [formerly Item #7]
Order and adoption of Statement of Reasons for Amendments to Regulations re: WQCC 05-03 (R). (Appearing: Zach Shandler)**

The Commission discussed various minor revisions and corrections to be made in the documents.

ACTION: Commissioner Vigil moved to adopt the Order and Statement of Reasons for Amendments to the Regulations. Commissioner Darden seconded the

motion. Commissioner Murray noted that he was not present at the earlier meeting and abstained. The motion passed unanimously.

Mr. Shandler announced that he had to leave the Commission meeting.

**Item #7 [formerly Item #5]
Request for Approval of Final Draft of TMDLs for the Red River Watershed (Rio Grande to the Headwaters). (Appearing: Jennifer Ickes, SWB)**

Ms. Ickes presented the Final Draft of the TMDLs for the Red River Watershed. The Commission discussed at length a change in the text at Comment Set B of the Draft. The Commission agreed that the following sentence should be added to the Bureau response at page 2, line 3, of the December 16, 2005 letter from Amigos Bravos to Ms. Ickes: "In addition, other compliance remedies are outlined in Section 9.0, page 59 of this TMDL document."

The Commission Chair requested a status report on the mailing list and whether it is being updated on an ongoing basis. Ms. Ickes indicated that five lists had been updated and combined into one list that would be maintained.

ACTION: Commissioner Glass moved that the Commission approve the Final Draft of TMDLs for the Red River Watershed into the Water Quality Management Plan with the one text modification suggested by Commissioner Goad. Commissioner Hutchison seconded the motion. The motion passed unanimously.

Item #8 Other Business

None.

Item #9 Next Meeting

The Commission Chair noted that there would not be a February 2006 meeting because the Legislature would be in session and that the next Commission meeting would be held on March 14, 2006.

Item #10 Adjournment:

ACTION: Commissioner Glass moved for adjournment. Commissioner Bada seconded the motion. The motion for adjournment passed unanimously.

Derrith Watchman-Moore, signature on file

WQCC Chair