

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

1190 St. Francis Drive, Room N2150

Post Office Box 26110

Santa Fe, New Mexico 87502

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



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

**Meeting Minutes
New Mexico Water Quality Control Commission
Regular Meeting
November 13, 2012
9:00 a.m.
New Mexico State Capitol Building Room 311
Santa Fe, New Mexico 87501**

MEMBERS PRESENT:

Butch Tongate
Larry Dominguez
Mike Sloane
Doug Bland
Heidi Krapfl
Daniel Sanchez
Clark Taylor
DL Sanders
David L. Certain
Steve Glass
Hoyt Pattison
John Waters
Edward Vigil

Chair, Environment Department
Department of Agriculture
Department of Game & Fish
Bureau of Geology and Mineral Resources
Department of Health
Oil Conservation Division
Soil and Water Conservation Commission
Office of the State Engineer
State Parks Division
Municipal/County Representative
Member-at Large Conference Call
Member-at-Large
Member-at-Large

OTHERS PRESENT:

Sean Cunniff, New Mexico Attorney General's Office
Felicia Orth, Hearing Officer
Sally Worthington, Office of the Hearing Officer
Pam Castañeda, Administrator
Please see attached sign-in-sheet

The meeting was called to order by Mr. Tongate at 9:06 a.m.

Item 1. Roll Call.

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

Item 2. Approval of Agenda.

Action: Mr. Tongate recommended switching items 6 and 7. Mr. Sanders questioned this. Mr. Tongate responded that Item 7 discussed commission legal counsel during the Copper Rule hearing. Item 6 was the petition for hearing. Mr. Clark moved approval of the agenda with the correction. Mr. Waters seconded the motion. The motion passed unanimously.

Item 3. Approval of minutes of October 9, 2012 meeting.

Action: Mr. Waters noted that a correction was needed on item 4 page 2. The Commission questioned Mike Coffman about the geographic distribution of the operators on the certification committee. Mr. Sanders questioned line 49. The first page about the sign-in-sheets: where they were kept and if they should be attached to the minutes. Mr. Tongate requested that the sign-in-sheets be attached to the minutes.

Mr. Glass noted a correction was needed on item 2 page 2 line 59: approval of the agenda stated that Mr. Tongate motioned the approval it was Mr. Glass who moved approval of the agenda. Mr. Glass noted a correction on item 7 page 3 line 119. Mr. Glass requested briefing on the criteria, strategy and methods for setting targets for nutrient TMDLs, not Mr. Taylor. Mr. Taylor requested briefing on the monitoring of the Pecos following the Little Bear Fire. These were two separate requests. Last sentence on page 3 line 123 needed to reflect which individual made the statement that no enforcement actions were taken on behalf of the Commission. Mr. Tongate made the statement. Mr. Clark moved approval of the minutes with the corrections. Mr. Glass seconded. The motion passed unanimously.

Item 4. Approval of a Settlement Agreement and Proposed Stipulated Final Order in Mesa Oil Appeal, WQCC 10-12 (CO), Jennifer Hower, NMED/OGC, for Resource Protection Division; Louis Rose, Montgomery and Andrews, for Mesa Oil.

Action: Ms. Hower with the Resource Protection Division New Mexico Environment Department explained the history of this case. Mr. Pattison joined in by phone. The Compliance Order was issued on October 4, 2010 there were a series of motions before the commission and a series of extensions since the compliance order was issued. The parties were able to come to a settlement agreement. Louis Rose, attorney with Montgomery and Andrews representing

Mesa Oil, explained that the compliance order was one of two enforcement actions the department brought against Mesa Oil at the same time. One was under the hazardous waste act. Part of the settlement agreement was signed off by Secretary Martin.

Mr. Tongate noted that a correction was needed on page 10 of the agreement on the last line it had July and August rather than July and October. Ms. Hower responded they could make the change to July and August. Mr. Glass moved for approval. Mr. Waters seconded approval of the Stipulated Order and the settlement agreement. The motion passed unanimously.

Item 5. Hearing in WQCC 12-08 (V), Petition for Variance from 20.6.6.21.L NMAC. Pete V. Domenici, Jr., and Lorraine Hollingsworth, Domenici Law Firm, for Petitioner Bright Star Dairy; Misty Braswell, NMED/OGC, for Ground Water Bureau.

Action: Ms. Orth conducted the hearing in this case. Ms. Hollingsworth represented Bright Star Dairy who requested a two year variance in 20.6.6.21.L NMAC Dairy Rules. The department agreed on two years. Mr. DeRuyter explained his current operation of the land application area and how much it would cost to line the ditches. Ms. Braswell represented Kim Kirby, who testified for the department. Mrs. Orth stated all exhibits were entered into the record and the record was closed.

Mr. Tongate questioned if the commission should rule on this during the meeting or request finding of facts and conclusions of law to consider at the next meeting. Ms. Orth responded that Mr. Tongate could question the Commission to see if they were prepared to deliberate on this or he could request the petitioner or the department to present proposed findings fact and conclusions. After a break the Commission resumed the meeting at 11:05 a.m. The Commission deliberated and discussed whether the rules would be a reasonable burden for the dairy and if another year should be added on.

Mr. Tongate questioned if there was consensus regarding the cost of lining ditches with concrete for the dairy and if it would be a burden on the applicant for at least two or three years. There was a consensus on this issue. Mr. Waters motioned to amend the original motion to three years. Mr. Pattison seconded the motion. Mr. Glass motioned to amend the original motion to thirty months. Mr. Sanders seconded the motion. The motion amended to thirty months and the variance was set for May 13, 2015. The motion passed with one nay vote cast by Mr. Sloane. The variance was granted with a period of thirty months set for May 13, 2015.

Ms. Orth mentioned to Mr. Tongate that there should be a consensus of the Commission after Mr. Cunniff presented him with an order approving the variance with presumably a Statement of Reason. There was a consensus on this.

Item 7. Discussion of legal counsel for the Commission during the Copper Rule hearing, WQCC 12-01 (R), Commission Counsel Sean Cunniff.

Action: The Attorney General's office entered an appearance in the Copper rule. There was a conflict because Mr. Cunniff is Commission Counsel for the commission. Mr. Cunniff stated that under the Commission's rule the commission was not bound to use the Attorney General's Office. They could request another attorney. There was discussion amongst the commission and Mr. Cunniff whether to find other counsel or have Mr. Cunniff represent them. The Commission decided to let Mr. Cunniff represent them. The Commission broke for lunch at 11:50 p.m. and resumed the meeting at 1:02 p.m.

Item 6. Presentation of Petition for Rulemaking in WQCC 12-01 (R), 20.6.2 NMAC-The Copper Rule. Misty Braswell and Andrew Knight, NMED/OGC; Dal Moellenberg and TJ Trujillo, Gallagher & Kennedy; Bruce Fredrick and Jonathan Block, NMELC.

Action: Ms. Orth gave introductory remarks about the packets mailed to the Commission. There was a petition sent in the packets. A late filing called "Response to Petition" from Freeport McMoRan and another "Response to Petition" filed November 12, 2012 the Environmental Law Center were e-mailed to the commission in the morning and distributed during the meeting. There was also a third item that was distributed to the commission in hard copy a motion to admit the record from the Tyrone Permit Appeal. The reason this wasn't sent to the commission on November 2, the day it was filed, was because the commission wouldn't rule on a Motion until there was a reply. The commission didn't need to consider this motion it reflects that the Attorney General had entered an appearance in this matter.

Ms. Braswell and Mr. Knight representing the Environment Department were present to request the Commission set this matter for hearing for January 8. Mr. Mollenberg, representing Freeport-McMoRan Chino Mines Company, concurred with the Environment Department to set a hearing for January 8 and appoint a Hearing Officer to set-up a process or a pre-hearing conference. Mr. Fredrick for the New Mexico Environmental Law Center represented Gila resources information project GRIP, Amigos Bravos and Turner Ranch Property. Rachel Conn with Amigos Bravos

joined him in the presentation. Mr. Fredrick stated what he considered were substantial legal problems with the Department's proposed rule. Ms. Conn spoke about the irregularities in the process that lead up to the department's rule that was being proposed. Mr. Fredrick and Ms. Conn were present to request the Commission to reject the petition and send the copper rule back to the department's advisory board. Ms. Fox, representing Attorney General's office, stated that the proposed copper rule violates the water utility act, water quality regulations that are in place that prevent pollution under sources and the 2007 decision made in Tyrone. The Attorney General Office's opinion is that there is room for compromise and that it is important for the state and the communities involved in this issue and for the parties to come to a consensus rule.

Mr. Sloan motioned to set the hearing for April 9 and appoint Ms. Orth as the Hearing Officer. Mr. Bland seconded the motion. Mr. Dominguez and Mr. Pattison motioned that Ms. Orth be the hearing officer. The motion passed unanimously

The hearing is set for April 9, 2012.

A short break was taken.

Item 8. Reports on criteria, strategy and methods for setting targets for nutrient TMDLs; and plans for monitoring in the Pecos following the Little Bear Fire. James Hogan, NMED Surface Water Quality Bureau.

Action James Hogan, NMED Surface Water Quality Bureau, presented a report on what they are doing to monitor the impact of the fires from the Little Bear Fire and the Las Conchas Fires. They will be looking at the impact of them and at the Pecos Water Shed. He also presented an update on nutrients and how two things have changed. Nutrients are a water quality concern and at the State level the bureau has stopped drafting nutrient TMDLs. The Surface Water Quality has been engaging in meetings and trying to address concerns. Region 6 has asked them to provide them with a report on their nutrient criteria development and control strategy.

Item 9. Dairy Facility & Permitting Status Update. Jerry Schoeppner, NMED Ground Water Bureau.

Action. Jerry Schoeppner, Chief of the Ground Water Quality Bureau, presented an update on dairy permits.

Item 10. Other business and announcement of any enforcement actions taken on behalf of the Commission.

Action: Ms. Orth noted from an administrative point of view there would be a lot of material in the copper rule and in 12-07(R). Ms. Orth questioned how they would like the material to be sent to them. 12-05 (V) the petitioner asked for the variance not to be set on the December agenda.

Mrs. Braswell and Mr. Tongate stated that no enforcement actions were taken on behalf of the Commission.

Item 11. Next Meeting: December 11, 2012

Item 12. Adjournment.

The Chair adjourned the meeting at 3:27 p.m.



Commission Chair