

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

Approved April 10, 2007

New Mexico Water Quality Control Commission Meeting

January 9, 2007

10:00 a.m.

New Mexico Department of Transportation

GO Conference Room 1

1120 Cerrillos Road

Santa Fe, New Mexico 87505

MEMBERS PRESENT:

Cindy Padilla	NMED/Deputy Secretary, Acting Chair
Maxine Goad	Member-at-Large
Cheryl Bada	State Parks Division
Howard Hutchinson	Soil and Water Conservation Commission
Greg Lewis	Office of the State Engineer
Mark Fesmire	Oil Conservation Division (Mr. Fesmire in lieu of Wayne Price)
Julie Maitland	Department of Agriculture
Steve Glass	City of Albuquerque – Municipal/County Representative
Peggy Johnson	Bureau of Geology and Mineral Resources
Edward Vigil	Member-at-Large

MEMBERS ABSENT:

Fred Lujan	Member-at-Large
Mike Sloane	Department of Game & Fish

OTHERS PRESENT:

Jeff Ogburn, Taos Pueblo	Mark Morales, Sandia Pueblo
Scott Bulgrin, Sandia Pueblo	Stuart Butzier, Modrall Law Firm

Marcy Leavitt, NMED/SWQB
Pam Homer, NMED/SWQB
Tim Michael, NMED/GWB
Lynette Guevara, NMED/SWQB
Elizabeth Shields
Karen Garcia, EMNRD/MMD
Deborah Sarabia, NMED/SWQB
Tannis Fox, NMED/OGC
Roderick Ventura, GRIP
Joyce Medina, NMED

Jane DeRose Bamman, NMED/SWQB
Brent Moore, NMED/OGC
Stephanie Stringer, NMED/SWQB
Jolene L. McCaleb
Rachel Conn
Bruce Gallaher, LANL
Hilary Brinegar
John Kelly, Modrall Law Firm
Zachary Shandler, AG's Office

Acting Chair Cindy Padilla, 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 Agenda

Action: Ms. Maitland moved to approve the agenda. Mr. Lewis seconded. The motion passed unanimously.

Item 3. Approval of the November 14, 2006 meeting minutes.

Ms. Goad and Mr. Glass noted amendments to be made in the November 14, 2006 meeting minutes.

Action: Mr. Glass moved to approve the November 14, 2006 meeting minutes as amended. Ms. Goad seconded. The motion passed unanimously.

Item 4. Adoption of the WQCC Open Meetings Act 2007 Resolution.

Mr. Glass noted a date correction in the text of the resolution. Additionally, he requested that the specific date of the rule adoption in 2003 should be included in the text.

Action: Mr. Vigil moved to approve the resolution as amended. Ms. Maitland seconded. The motion passed unanimously.

Item 5. Request for hearing in re: Proposed amendments to 20.6.4.7 and 20.6.4.8 NMAC, WQCC 06-11 (R), changing standards for Interstate and Intrastate Surface Waters. Brent Moore, NMED/OGC.

Mr. Moore explained that these amendments were brought to the Commission as a result of a request by the Commission during the Valle Vidal hearing. He noted that the bureau had two requests of the Commission, that a hearing be scheduled on the Commission's April 10, 2007 meeting agenda and that a hearing officer be appointed to conduct the hearing. He stated that he had spoken to Felicia Orth and she is available to act as hearing officer. Additionally, Mr. Moore briefly outlined background information regarding the changes the bureau wished to make.

After a brief discussion regarding the hearing venue it was noted that since this issue was of statewide applicability, Santa Fe would be the appropriate place for the hearing. Mr. Moore also noted that the hearing in this matter would be to consider a change in standards as currently set out in the Water Quality Act.

The Chair asked for discussion regarding the appointment of a hearing officer in the event the Commission chose to grant the petition for hearing as proposed by the bureau. Mr. Glass stated his approval of the appointment of Ms. Orth as hearing officer and made the following motion.

Action: Mr. Glass moved that the hearing in WQCC 06-11 (R) be placed on the Commission's April 10, 2007 meeting agenda and that Ms. Orth be appointed as hearing officer. Mr. Hutchinson seconded. The motion passed unanimously.

A brief discussion followed regarding the possible length of the hearing. Marcie Leavitt noted that the bureau has conducted a series of public hearings and currently did not anticipate a great deal of controversy regarding the matter. However, she also stated that there really was no way to guarantee that controversies would not arise.

Item 6. Update on the status of New Mexico's 2006-2008 Integrated CWA §303(d)/§305(b) Monitoring and Assessment Report, Lynette Guevara and Stephanie Stringer, NMED/SWQB.

The Chair stated that prior to Ms. Guevara and Ms. Stringer presentation, Jane DeRose Bamman would brief the Commission regarding recent activity with respect to the EPA and Commission submission of changes made to Water Quality Standards (WQS).

Ms. DeRose Bamman presented a brief update of the changes to WQS that the Commission approved in 2005. She noted that New Mexico's latest WQS submission was received by the EPA on July 7, 2005 and that the EPA had issued its Record of Decision (ROD) of the changes on December 29, 2006. Ms. DeRose Bamman stated that the EPA had approved the majority of Commission revisions but had requested additional supporting documentation regarding several of the new changes, as well as several of the revisions, that had been made. She noted that all requested attainable analyses will be provided to the EPA. She also mentioned that the Commission would receive, in addition to the EPA correspondence distributed today, copies of EPA's ROD.

There was brief Commission discussion regarding the length of time within which the requested documentation could be provided to the EPA. Department staff noted that the requests were not unduly burdensome and could be handled within a relatively short time frame.

Ms. Guevara began her update presentation with a proposed timeline and draft of the 2006-2008 State of New Mexico Integrated CWA §303(d)/§305(b) List for a preliminary review by the Commission. She also mentioned that the EPA would review and comment on the draft list before it was released for public comment and requested that the Commission also review and comment on the integrated list before releasing it to the public in order to work out concerns in advance. She also set out the parameters and a proposed time line for the thirty day public comment period. The Commission will also be able to make comments during the thirty day public comment period. Following the review and

public comment periods the bureau will present the final drafts at the appropriate Commission meeting, which will likely be the regularly scheduled May meeting.

There was a lengthy Commission discussion about the bureau's proposals, particularly as to the various timing issues and the fact that a sixty day legislative session would commence January 16, 2007, and a number of Commissioners would find it difficult to adequately review or offer comments. Ms. Guevara mentioned that there was an effort to move the process along as quickly as possible since the due date for the report was actually April 1, 2006. Marcy Leavitt, Bureau Chief, SWQB, stated that the bureau could accommodate changes if the Commission wished to revise the proposed timeline. Several Commissioners indicated that it would be more reasonable to move the proposed timeline due dates forward thirty days giving members a more reasonable time period within which to review and comment on the bureau's proposals. The timeline was adjusted accordingly and will be posted to the bureau web site.

Ms. Stringer discussed, in general terms, the draft Integrated Report portion of the bureau's presentation. She noted that a specific effort was being made to present a document that is as short and concise as possible while being thorough and mindful of guideline requirements. There was discussion regarding the prior listing cycle and the watersheds contained in the proposed listing cycle.

Bureau staff noted that documents proposed to be reviewed by the Commission would be sent to all Commissioners electronically and also in hard copy for anyone wishing to receive documents in that form. It was also noted that the revised timeline incorporating the changes that were requested by the Commission would be prepared by bureau staff and distributed to Commission members.

Item 7. Possible action relating to proceedings to be conducted in the Tyrone remand, WQCC 03-12 (A) and 03-13 (A). Tannis Fox, NMED/OGC; Stuart Butzier, Phelps Dodge Tyrone; Roderick Ventura, GRIP.

Discussions by all parties and the Commission were transcribed by Kathy Townsend Court Reporters. A copy of the transcription is available for review in the office of the Commission Administrator.

Action: Ms. Maitland moved that the Commission adopt the Department's Proposed Prehearing Scheduling Order and Appointment of Hearing Officer with the addition of a mandatory prehearing conference between the parties to present their proposed criteria for determining the place of withdrawal of water for present and foreseeable use and to stipulate to criteria to which they agree and determine which criteria will have to be argued before the Commission. Mr. Hutchinson seconded. The motion passed unanimously.

A discussion followed relating to timelines for document to be submitted and meetings to be held by the parties prior to the hearing.

It was stipulated by the parties that Ms. Padilla would act as Hearing Officer in this matter.

Item 8. Other Business

There was discussion regarding the length of appointment terms of Commission members. The Chair stated that information relating to that issue would be provided to members as soon as it was received from the Governor's office.

Item 9. Next Meeting: April 10, 2007, Santa Fe, New Mexico

Item 10. Adjournment:

Ms. Maitland moved for adjournment. Ms. Bada seconded. The motion passed unanimously. The meeting adjourned at 1:30 p.m.

Cindy Padilla, Acting Chair
Water Quality Control Commission