



Kerry Howe, *Chair*
Steve Glass, *Vice-Chair*
Suzanne Busch
Camilla Feibelman
Julia Maccini

Roland Penttila
John Pietz
Roberto Roibal
Caroline Scruggs

Water Protection Advisory Board
c/o ABCWUA
P.O. Box 568
Albuquerque, NM 87103

Minutes: January 11, 2019
Location: Bernalillo County Public Works Division, 2400 Broadway SE, Bldg. N Conf. Room
Time: 8:30 to 10:30 a.m.

Board Members Present: Dr. Kerry Howe, Steve Glass, Julia Maccini, John Pietz, Roberto Roibal, Dr. Caroline Scruggs, and Camilla Feibelman

Board Members Absent (excused): Roland Penttila and Suzanne Busch

PIC Members Present: Bart Faris, Ken Ziegler, Diane Agnew, Liz Anderson, Kate Mendoza, Kali Bronson, Dan McGregor, and Kathleen Verhage.

Guests: None

I. Call to Order

Chair Dr. Kerry Howe called the meeting to order at 8:35 a.m.

II. Approval of Agenda

Chair Howe requested a motion to approve the agenda. Mr. Roberto Roibal motioned to approve the agenda and Mr. Steve Glass seconded the motion. Motion to approve the agenda carried unanimously.

III. Approval of Meeting Minutes

Chair Howe asked board members if there were any comments on the November 30th meeting minutes and board members had no comments. Ms. Julia Maccini motioned to approve the November 30th meeting minutes and Mr. John Pietz seconded the motion. Mr. Steve Glass and Dr. Caroline Scruggs abstained from the vote for approval of the minutes. Motion to approve the November 30th meeting minutes carried unanimously.

IV. Board Business

a. Welcome City of Albuquerque Appointed Member

Chair Howe welcomed Camilla Feibelman to the board as the new city appointment. She gave a brief introduction to the board and said she looks forward to working with the board on water quality issues. Board members introduced themselves to Ms. Feibelman.

b. Elect 2019 WPAB Officers

Board members discussed the rules for electing board officers and PIC members, with Mr. Bart Faris and Mr. Ken Ziegler contributing to the discussion. Mr. Faris said that officers of the board can serve up to two consecutive terms as chair or vice-chair and board members are nominated by other board members for officer positions.

Mr. Glass nominated Chair Howe to continue as chair. Chair Howe accepted the nomination and said he was willing to accept the position. Dr. Scruggs seconded the nomination. Motion to continue with Chair Howe serving as chair of the board passed unanimously. Chair Howe will serve as the chair of the board for his second term.

Chair Howe nominated Mr. Glass for vice-chair of the board. Mr. Glass accepted the nomination and said he was willing to accept the position. There was some discussion among board members to nominate Ms. Maccini for vice-chair but Ms. Maccini said she could not accept the position this year due to other obligations. Dr. Scruggs seconded Mr. Glass's nomination. Motion to make Mr. Glass vice-chair of the board passed unanimously. Mr. Glass will serve his first term as vice-chair of the board for 2019.

c. Approval of WPAB Open Meetings Resolution

Chair Howe said that the board follows the Open Meetings Act every year to remain transparent to the public. Ms. Feibelman asked about applying the Open Meetings Act to discussions that may occur outside of board meetings and Chair Howe replied that such discussions are permissible so long as a quorum does not exist. Mr. Roibal asked about board member presence at public meetings and other public places and PIC member, Ms. Diane Agnew replied that she keeps track of board members' schedules to ensure that inadvertent Open Meetings Act violations do not occur.

Vice-chair Glass said that during the training at the Attorney General (AG) office on the Open Meetings Act he asked about the application of the act to WPAB. He reported that the WPAB is not legally required to follow the Open Meetings Act and that its adherence to Open Meetings Act rules is voluntary. Ms. Agnew pointed out that following the Open Meetings Act is written into the governing ordinances for the board. Vice-chair Glass added that if a quorum does occur outside of a scheduled meeting, it should be reflected in the following board meeting's minutes and should clarify that no business was discussed.

Chair Howe asked for a motion of adopt the Open Meetings Act Resolution for 2019. Vice-chair Glass moved to adopt the Open Meetings Act and Ms. Maccini seconded the motion. Motion to adopt the Open Meetings Act for 2019 passed unanimously.

d. Approval of WPAB Procedure for Board Correspondence and Documents

Chair Howe told board members about a draft correspondence procedure to avoid a rolling quorum when documents need to be edited outside of meetings. Ms. Agnew said that the proposed procedure was drafted by Chair Howe and herself and was reviewed for compliance with the Open Meetings Act by the Albuquerque Bernalillo County Water Utility Authority (Water Authority) general counsel prior to the meeting. Mr. Ziegler and Ms. Feibelman raised the subject of draft board correspondence being posted to the online portal so the public can follow the process. PIC members Mr. Dan McGregor and Ms. Agnew both recommended against this, indicating that their respective legal counsels advised against posting drafts online. They further pointed out the delays in the approval process caused by posting preliminary drafts, and that drafts usually undergo significant revisions before being finalized. Dr. Scruggs added that she would prefer that drafts not be posted because of the potential for inaccuracies being disseminated in preliminary drafts. Ms. Feibelman asked about final drafts being posted online prior to the approval at the meeting and Chair Howe explained that the final version is posted online once it has been approved by the board. Chair Howe then further explained the correspondence process for the board and what it looks like in practice. Mr. John Pietz requested that the posted locations and availability of draft and final documents for the board be added to the draft correspondence procedure for clarification.

Vice-chair Glass suggested that the draft document with markups could be emailed to the board prior to the meeting. Mr. Ziegler voiced his concern about forming a rolling quorum when draft documents are emailed to the board. Ms. Feibelman suggested a GoogleDoc with specific viewing access, but Mr. Ziegler said it would still violate the rolling quorum concept. Dr. Scruggs suggested returning back to the draft correspondence procedure that was already reviewed by legal counsel. Dr. Scruggs reiterated that she is not comfortable with first drafts of documents being posted online for the public. Vice-chair Glass suggested that one of the tips from the AG training was that draft documents could be emailed to the board via blind carbon copy. Chair Howe said the change to the draft correspondence procedure would apply to Step 2 and reflect that electronic distribution of draft documents should be blind carbon copied to the board and board members would send their comments and responses back to Ms. Agnew. Chair Howe said that markup drafts to be voted on at the next board meeting should be posted on the website when the agenda is posted.

Mr. Pietz suggested that the board could have additional meetings for live-editing, but pointed out that this could be very time-consuming. Ms. Feibelman asked where final documents are posted and Ms. Agnew replied that final documents are emailed to board members as well as posted on the board's website for public access. Ms. Maccini suggested that a first-draft should be presented in a first meeting and then edited in a subsequent meeting. Vice-chair Glass reiterated the need for expeditious work, especially for legislative items that are very timely. Chair Howe suggested adding the alternative process to the draft correspondence procedure explaining that the board could have multiple meetings for editing or it could follow the proposed procedure. Mr. Ziegler added that board members could also form a sub-committee to draft correspondence. Chair Howe suggested adding language about formation of a sub-committee with four or fewer board members to draft correspondence to prevent a rolling quorum. After review of the draft correspondence procedure, board members

requested minor changes and additions to clarify the process in Steps 1-4, with all other items to remain the same. Chair Howe also asked that Ms. Agnew add a paragraph about editing in situations where time is not an issue and where multiple editing meetings could occur. Chair Howe said the board would not vote on the draft correspondence procedure at today's meeting due to the changes requested. Ms. Agnew said she would bring the edited draft to the next meeting for board approval.

e. Draft Presenter Schedule

Ms. Agnew discussed the draft presentation schedule with board members. Ms. Agnew said that the City of Albuquerque (City) Green Team and municipal separate storm sewer system (MS4) permittees will be presenting at the February meeting.

Chair Howe asked if the City has responded to the November 30th stormwater letter that the board sent to the City and Ms. Agnew replied that there has not been a formal response from the City. Ms. Kathy Verhage, PIC member, said that the General Obligation (GO) bond proposal for 2019 was supposed to go before the City Council on January 7th but was held up because the mayor's office was still consolidating their comments on the budget cycle. Ms. Verhage added that the GO bond budget process for the City was delayed, which is unusual, and will be up for discussion again in February. Chair Howe asked board members if the board should invite the mayor's office to the next meeting to solicit their response to the November 30th stormwater letter the board sent. Ms. Feibelman asked for a brief explanation about the letter and Chair Howe summarized the letter and said the letter emphasized that a budget cut could severely impact the City's stormwater program and could impact MS4 permit compliance. Ms. Verhage clarified that the GO bond issue will be reviewed by the budget committee and then it will come up for discussion at the February 7th City Council meeting. Ms. Verhage indicated that it should only be introduced, not voted upon at the February 7th meeting.

Chair Howe asked that the board find out more about what the City Green Team does in relation to stormwater and Ms. Agnew said that will be covered in the City Green Team's presentation to the board in February, as well as their group charge and intent. Ms. Feibelman asked for clarification on what the MS4 permit was exactly and Chair Howe explained more about the MS4 permit in the Middle Rio Grande. Vice-chair Glass said it would be helpful to have someone from the mayor's office present at the next board meeting regarding the budget process. Mr. Faris and Ms. Verhage said they will be discussing the GO bond issue internally with City finance and that they will ask the appropriate person from the mayor's office attend the February board meeting.

Ms. Agnew continued to review the draft 2019 presentation schedule and highlighted the aquifer mapping program suggested for presentation by the New Mexico Bureau of Geology and Mineral Resources in March. She added that there are a few presentations that are leftover from not happening last year, such as the update on the pharmaceuticals and personal care products study the Water Authority is conducting. Vice-chair Glass suggested adding a presentation on the Bureau of Reclamation's (Reclamation) Middle Rio Grande basin study to the agenda in September because they are reviving the study this year and should have interesting results by this fall. He said the contact for the study is Ms. Dagmar Llewellyn from Reclamation. The

conversation then turned to a brief discussion about the 2019 Water Dialogue, which had been attended by several PIC members and board members.

Chair Howe guided the conversation back to the draft presentation schedule. Vice-chair Glass requested a presentation on the mixed waste landfill from Sandia National Labs and Ms. Agnew said she will make sure that it is included as a topic when Sandia National Labs provides their scheduled Resource Conservation and Recovery Act update. Alternatively, the New Mexico Environment Department could also provide an update during their presentation on environmental sites in November.

Mr. Roibal shared that he was concerned about the Water Authority's recently issued serviceability statement for the Santolina development and asked if topics could be added to the presentation schedule during the year. Chair Howe clarified that the board focus is primarily water quality related items, but yes, topics could be added throughout the year if the board is interested.

Chair Howe said this document is not voted on by the board for approval because it evolves through the year.

f. PIC Agency Updates

Mr. McGregor said the Mid-Region Council of Governments (MRCOG) Water Resources Board met earlier in the week and will be working on developing guidelines for oil and gas ordinances. The MRCOG Water Resources Board created a sub-committee tasked with developing those guidelines and they anticipate a two-year process to get them developed. Mr. McGregor said the work product will be a series of guidelines by topic related to the oil and gas ordinances and may include draft ordinance language. Mr. McGregor said that the sub-committee plans to first discuss water quality protections and will be considering the WPAB concerns for oil and gas ordinance development. Mr. Glass said the product from the sub-committee will be a technical document based on the hydrogeological boundaries in the Middle Rio Grande and will provide guidance for entities within those hydrogeologic boundaries to use for ordinance development.

Mr. Faris provided an update on the Kirtland Air Force Base (KAFB) Bulk Fuels Facility (BFF) jet fuel leak site. Mr. Faris indicated the project is mostly on hold at the moment due to the federal government shutdown. Mr. Faris said that the ethylene dibromide (EDB) plume is substantially smaller and is stable, showing little movement in the direction back towards KAFB. He added that KAFB is drilling for soil core samples to fill data gaps and they are struggling to find concentrations of fuel products at the site. Mr. Faris said the site is operating all four of the extraction wells and that between the extraction wells and natural degradation, the plume is shrinking. Ms. Feibelman asked about some technical aspects of the site and Mr. Faris explained the site in further detail, stating that he could send her additional information after the meeting. Ms. Agnew clarified that drinking water wells have not been impacted by the site.

Mr. Faris told board members that the City will be using a contractor to characterize the waste and vadose zones around three City landfills: Eubank, Yale, and Sacramento. The City is concerned about volatile organic compounds found at Yale landfill and is working to characterize the contaminants found at the site. Mr. Faris shared that the

City is also working to address vapor intrusion issues at several City landfills because they are trying to get ahead of both the new vapor intrusion and groundwater requirements established by the Water Quality Control Commission to take effect in 2020. Ms. Feibelman asked about vapor intrusion at landfills and Mr. Faris and Mr. Ziegler explained the issue further.

Ms. Agnew told board members that the Water Authority water resources division is developing an environmental plan as part of the implementation of the Water Authority's 100-year water resources management strategy, Water 2120. Ms. Liz Anderson, PIC member, said that Water Authority compliance division is working on the 2018 water quality report, also known as the consumer confidence report, required for drinking water systems by the Environmental Protection Agency. Ms. Agnew added that we provide the water quality report to customers to improve understanding about drinking water quality, but the report also includes highlights from other programs in the Water Authority. Ms. Anderson noted that the consumer confidence report format is being updated based on input received during recent Customer Conversation meetings hosted by the Water Authority.

Mr. McGregor told board members that the Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA) has recently worked on a sediment study to address stormwater quality as required by the MS4 permit. He indicated that board members will hear more about the study at the next board meeting. Mr. McGregor told board members that Bernalillo County (County) staff are working on the county water conservation plan. Additionally, Mr. McGregor said the septic permitting program is continuing to issue non-compliance notices for owners who have septic systems out of compliance with the county ordinance. He added that this was part of the campaign that targets septic systems that are 30 years and older and requires proof of proper system operation every five years. Mr. McGregor said the campaign focuses on the unincorporated parts of the County.

Ms. Verhage said the City is working on their annual reporting for the MS4 stormwater permit. She said the City is also working on their industrial review program for stormwater compliance. Ms. Verhage said that since it is a new program, they are having some trouble connecting with some businesses, but they are working on improving communications.

g. 2019 State Legislative Update

Ms. Agnew provided the board with an overview of bills related to water quality that have been pre-filed with the New Mexico State Legislature in 2019. Mr. McGregor said that House of Representatives Bill (HB) 174 is likely misnamed and does include some significant measures for monitoring and water districts for the Middle Rio Grande, not just the Lower Rio Grande as the name indicates. Vice-chair Glass said that there are two companion bills, HB 186 and HB 187, there were assigned bill numbers yesterday and are related to water. Vice-chair Glass said HB 186 amends Interstate Stream Commission (ISC) statutes to address hydrology issues and provides criteria and direction for state and regional water planning whereas HB 187 directs the University of New Mexico Utton Transboundary Resources Center to propose reform relating to long lasting water law issues in New Mexico, including adjudication.

Ms. Agnew said that Senate Bill (SB) 5 proposes a change in membership and required qualifications for the ISC. Ms. Agnew said that SB 186 focuses on amendments to the Oil and Gas Act and proposes substantial fines that could be issued by the Oil Conservation Division. Ms. Feibelman added that there were substantial fines in previous years for water quality issues caused by the oil and gas industry and that there were no fines in 2018.

Vice-chair Glass told board members that the WPAB has written letters of support or opposition for state legislation in the past and it is within the board's purview to do so. Chair Howe and vice-chair Glass discussed the draft board correspondence procedure related to the legislative session and discussed the possibility of calling special meetings to discuss letters of support or opposition for legislative items during the session. Ms. Feibelman asked for guidance about board member opinions on legislation and vice-chair Glass clarified that board members can have personal opinions, but never speak on behalf of the board unless agreed to by board. Chair Howe said the process could start with a board meeting to discuss board support or opposition, followed by appointing a board member to speak on behalf of the board, and then having a follow-up special meeting to review. Ms. Feibelman clarified that her work with the Sierra Club regularly brings her to the legislative session, but she will not be speaking on behalf of the board, only the Sierra Club.

Ms. Agnew said that the legislative session goes until March 15th and she would be keeping track of the session. She also told board members if they would like to draft a letter on behalf of the board for any legislative items, they are welcome to do so and bring a draft of the letter to the February board meeting.

V. Other Board Business

No other board business.

VI. Public Comment Period

Mr. Dave McCoy, Citizen Action New Mexico, said he had two items to discuss with the board: the KAFB BFF jet fuel leak and the mixed waste landfill. Mr. McCoy said that a presentation on the mixed waste landfill in November of this year would be too late because Sandia National Labs will be submitting their five-year review of the site to the New Mexico Environment Department (NMED) this month. Mr. McCoy expressed his concern for the metallic sodium present in the mixed waste landfill. He suggested that board members support opening up the landfill and fully excavating the facility. Mr. McCoy said that he had sent a letter to Sandia National Labs asking where the metallic sodium facility is located and that he never heard anything back. He said that he has also submitted Freedom of Information Act (FOIA) requests to Sandia National Labs and Inspection of Public Records Act (IPRA) requests to NMED for further information about the location of the metallic sodium within the mixed waste landfill facility.

Mr. McCoy then addressed the KAFB BFF jet fuel leak site. He told board members that KAFB submitted a Resource Conservation and Recovery Act (RCRA) Facility Investigation

(RFI) report in 2014 that was then retracted without any evidence or reason for retraction. Mr. McCoy said that KAFB submitted another RFI in 2017 and told board members that he requested all documents related to the 2017 RFI review from NMED and received a draft of NMED staff comments on the document. Mr. McCoy said he then requested all documents related to the 2014 RFI from NMED and received a lot of draft documents that included draft notices of disapproval for soil and groundwater components of the 2014 RFI report. Mr. McCoy said that his records request revealed devastating documents for the BFF project and suggested that KAFB should not be trusted to tell the truth to the public. Mr. McCoy said he forwarded the documents he received to Water Authority staff for their reference. He told board members that he has spent the last few months reviewing the documents and found many discrepancies in the technical arguments presented in the RFI reports. He expressed to board members the importance of reviewing site documents and highlighted that the public has been kept in the dark about issues at the BFF site. Mr. McCoy said that the data collected at the BFF site has not been good technically. Mr. McCoy told board members that there is now a 2018 Phase 1 RFI report that was submitted to NMED and only includes data and analysis up to 2015. He said that KAFB will be producing a Phase 2 RFI this year. Mr. McCoy reiterated that the RFI reports should be heavily reviewed.

Mr. McCoy asked board members for any questions and there were none. He told board members that he would be issuing a report about his findings very soon. Mr. McCoy said that the BFF site needs independent oversight and to not let NMED or KAFB get away without it. Mr. McCoy also indicated that there was a pending lawsuit on the site, but he was not sure about its current status.

Mr. McCoy said that he is glad the board adopts the Open Meetings Act regularly and told board members that he is able to submit IPRA requests for documents he is interested in. Mr. Roibal asked about the report Mr. McCoy said he would deliver to the board and Ms. Agnew said she would receive it from Mr. McCoy and forward it to the board.

VII. Adjourn

Chair Howe asked for a motion to adjourn. Mr. Roibal motions to adjourn the meeting and vice-chair Glass seconded the motion. Motion passed unanimously. The meeting was adjourned at 10:35 a.m.