

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

(COPY)



No. WQCC 14-05 (R)

In the Matter of:

**PROPOSED AMENDMENTS TO
*STANDARDS FOR INTERSTATE
AND INTRASTATE WATERS,*
20.6.4 NMAC**

MOTION TO CLARIFY SCHEDULING ORDER

On July 10, 2014, a Scheduling Order was filed in this matter, signed by Chair and Hearing Officer Butch Tongate. That Order set April 14, 2015 as the first day of the Triennial Review hearing. On November 25, 2014 the Water Quality Control Commission (“WQCC” or “Commission”) issued an Order designating Chris Saucedo as Hearing Officer in this matter, and delegating to him “all powers and duties granted under Section 104 of the WQCC Guidelines and all other applicable laws.” At the January 13, 2015 meeting of the Commission, a motion passed to schedule the Dairy Rule hearing in April of 2014, and to reschedule other matters previously scheduled for April.

On January 14, 2015, counsel for the New Mexico Environment Department (“Department”) sent an email to the Hearing Clerk questioning whether the actions of the WQCC on January 13, 2015 necessitates that the Hearing Officer and Commission reschedule the hearing date for the Triennial Review, and seeking to inform the Hearing Officer of the time and budget considerations of a second round of public notice. To date there has been no response.

There are three reasons why the Department seeks to immediately address the effect of the current Order: time, money and witness availability. Pursuant to Section 302A of the

Procedural Order, public notice of the hearing shall be given at least sixty (60) days prior to the hearing. Publication in newspapers and in the New Mexico Register generally takes at least 14 days lead time, therefore any change to the hearing date should be ordered at least 75 days prior to the new hearing date, to facilitate public notice. Regarding financial impact and planning, Exhibit 11 of the Department's Surface Water Quality Bureau's Notice of Intent identifies approximately \$1150 in publication costs. The projected hearing costs for three days are approximately \$5,000. In addition, scheduling arrangements have been made by various parties in reliance upon the Order that has been in place since July, 2014, a change in the hearing date may prejudice one or more parties if the hearing is rescheduled without consulting all parties.

In order to allow for ample public notice of the Triennial Review hearing, to address fiscal year financial planning should the hearing date be moved past Fiscal Year 2015, and to allow for consultation on witness availability, the Department herein moves and requests that the Hearing Officer take appropriate action to either confirm the present Scheduling Order is still in effect, or to issue a revised Scheduling Order in this matter. Counsel for all other parties concurred with this motion, or did not respond.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT
OFFICE OF GENERAL COUNSEL

By: _____



John Verheul
Kathryn S. Becker
Assistant General Counsel
P.O. Box 5469
1190 S. St. Francis Dr., Suite N-4050
Santa Fe, New Mexico 87502-5469
Tel (505) 827-0528
Fax (505) 827-1628
john.verheul@state.nm.us
kathryn.becker@state.nm.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion to Clarify* was served on the following parties on this the 27th day of January, 2015 via the stated delivery methods below:

Hand delivery:

Ms. Pam Castaneda, Administrator
Water Quality Control Commission
Room N-2168, Runnels Building
1190 St. Francis Dr.
Santa Fe, New Mexico 87505

Email:

Counsel for Amigos Bravos
Erik Schlenker-Goodrich, Esq.
Kyle Tisdell
Western Environmental Law Center
208 Paseo del Pueblo Sur, #602
Taos, NM 87571
eriksg@westernlaw.org
tisdell@westernlaw.org

*Counsel for Freeport McMoRan Chino Mines
Company*

Dalva L. Moellenberg, Esq.
Germaine R. Chappelle, Esq.
Gallagher & Kennedy, P.A.
1239 Paseo de Peralta
Santa Fe, NM 87501
DLM@gknet.com
Germaine.chappelle@gknet.com

Counsel for Peabody Energy

Stuart R. Butzier, Esq.
Modrall, Sperling, Roehl, Harris & Sisk, P.A.
Post Office Box 9381
Santa Fe, New Mexico 87504-9381
srb@modrall.com

Counsel for San Juan Water Commission

Jolene L. McCaleb
Taylor & McCaleb, P.A.
P.O. Box 2540
Corrales, New Mexico 87048-2540
jmccaleb@taylormccaleb.com

Counsel for Chevron Mining, Inc.
Louis W. Rose
Montgomery & Andrews, P.A.
P.O. Box 2307
Santa Fe, New Mexico 87504-2307
lrose@montand.com

*Counsel for Los Alamos National Security LLC
And the United States Department of Energy*
Lara Katz
Montgomery & Andrews, P.A.
Post Office Box 2307
Santa Fe, New Mexico 87504-2307
lkatz@montand.com

Timothy A. Dolan
Office of Laboratory Counsel
Los Alamos National Laboratory
P.O. Box 1663, MS A187
Los Alamos, NM 87545
tdolan@lanl.gov

Lisa Cummings
Staff Attorney
Office of Counsel
Los Alamos Site Office
U.S. Department of Energy
528 35th Street
Los Alamos, NM 87544-2201
Lisa.cummings@nnsa.doe.gov



John Verheul, Assistant General Counsel