

STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION



In the Matter of:)
)

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

No. WQCC 14-05 (R)

NEW MEXICO ENVIRONMENT DEPARTMENT SURFACE WATER QUALITY
BUREAU'S NOTICE OF INTENT TO PRESENT TECHNICAL TESTIMONY

The New Mexico Environment Department ("Department"), Resource Protection Division, Surface Water Quality Bureau ("Bureau" or "SWQB") hereby submits, pursuant to the *Guidelines for Water Quality Control Commission Regulation Hearings* as approved on November 10, 1992, and amended on June 28, 1993 ("Guidelines"), and in accord with the Procedural Order, WQCC No. 14-05 (R) (July 10, 2014) ("Order"), its notice of intent to present technical testimony in support of the application to amend portions of Title 20, Chapter 6, Part 4 of the New Mexico Administrative Code ("NMAC"). As required by the Guidelines and the Order, the Bureau provides:

1. The person for whom the witness(es) will testify.

The Bureau of the Department.

2. The identity of each technical witness that the Bureau intends to present and descriptions of their educational and work background.

The Bureau will call the following witness(es) at the hearing to present technical testimony:

James Hogan, Ph.D. Dr. Hogan is the Bureau Chief for the Department's Surface Water Quality Bureau. Dr. Hogan is expected to provide technical testimony regarding the regulatory framework for the proposed amendments, its relationship to the Department's Surface Water Quality Program and State Water Quality Standards ("WQS") rules and regulations, and how public notice requirements were met for the petition and hearing. Dr. Hogan's written testimony is provided as SWQB Exhibit 1. Dr. Hogan's resume, that includes his educational and professional experience, is attached hereto as SWQB Exhibit 3.

Kristine Pintado, M.S. Ms. Pintado is the Program Supervisor for the Department's Standards, Planning and Reporting Team of the Bureau's Monitoring, Assessment, and Standards Section. Ms. Pintado is expected to provide testimony regarding proposed minor amendments to the definitions section of 20.6.4.7 NMAC, which includes addition of definitions for Most Probable Number ("MPN"), pH, closed basin and irrigation storage, a definition for colony forming units ("cfu") to allow for the use of Most Probable Number ("MPN"). Ms. Pintado will then provide substantial detail regarding the Bureau's other proposed amendments to the State's Surface Water Quality Standards (WQS") as found in 20.6.4 NMAC and as found in the Bureau's original petition and amended petitions. *See* SWQB Exhibit 2. Ms. Pintado's written testimony is provided as SWQB Exhibit 13 and Ms. Pintado's resume is attached as SWQB Exhibit 14.

Jodey Kougioulis, B.S. Mr. Kougioulis is an Environmental Scientist with the SWQB and serves as the Bureau's Quality Assurance Officer. Mr. Kougioulis's direct technical testimony will detail the SWQB's proposed changes to specific language in 20.6.4.97 NMAC and the Bureau's proposal to amend certain surface WQS for twenty (20) non-perennial stream segments to classify each as ephemeral surface waters of the State pursuant to subsection C of

20.6.4.15 NMAC. His written testimony is provided as SWQB Exhibit 39. Mr. Kougioulis's education and professional experience is described in his resume attached as SWQB Exhibit 40.

Deborah Sarabia, M.S. Ms. Sarabia is an Environmental Scientist with the Department's SWQB. Ms. Sarabia is expected to provide technical testimony regarding amendments to the WQS related to two Use Attainability Analyses ("UAA") studies. The first UAA proposal concerns four ephemeral waters in the Pecos River basin, in the Tularosa Valley closed basin and the Mimbres closed basin. The second proposal is to change the designated aquatic life uses for the Animas River in New Mexico to coolwater. Her written testimony is provided as SWQB Exhibit 46. Ms. Sarabia's education and professional experience is described in her resume attached as SWQB Exhibit 47.

Bryan Dail, Ph.D. Dr. Dail is an Environmental Scientist with the SWQB. Dr. Dail is expected to provide technical testimony regarding three Bureau proposed amendments to the WQS. The first two proposals are editorial changes to correct hydrologic terms in the descriptions for segments in 20.6.4.502 NMAC and 20.6.4.503 NMAC of the Gila River Basin, and changes to correctly identify and describe a river segment within Segment 503. The third proposal is for recommendations based on a UAA conducted for the Mimbres River Basin. Dr. Dail's written testimony is provided as SWQB Exhibit 57 and his resume is attached as SWQB Exhibit 58.

Kirk Patten, J.D., M.S. The Bureau may call Kirk Patten, Assistant Chief of Fisheries, Research and Management Section, of the New Mexico Department of Game and Fish, as a rebuttal witness for proposed amendments to 20.6.4.16 NMAC.

The Bureau hereby reserves the right to call any other person, including the witness(es) of other parties, to present original and/or rebuttal testimony and to support or oppose the admission of any testimony, evidence, or exhibit.

3. Full direct testimony of each technical witness.

The Bureau has attached the written direct testimony of each witness that it will introduce at the hearing. The written direct testimony is attached as SWQB Exhibit 1 (James Hogan, Ph.D.), SWQB Exhibit 13 (Kristine Pintado, M.S.), SWQB Exhibit 39 (Jodey Kougioulis, B.S.), SWQB Exhibit 46 (Deborah Sarabia, M.S.), and SWQB Exhibit 57 (Bryan Dail, Ph.D.).

4. The anticipated duration of direct testimony by the Bureau's Technical Witnesses.

The Bureau believes that each listed witness's testimony will be approximately 30 minutes in length. The Bureau further requests that the technical witnesses be allowed to provide panel direct presentation and cross-examination testimony. A panel presentation of testimony, in accordance with the Procedural Order, Section 401B will help prevent the hearing from being unreasonably lengthy or cumbersome and avoid repetition of duplicative testimony.

5. The text of the Bureau's proposed rule amendments to 20.6.4 NMAC.

Attached as SWQB Exhibit 2 are the Bureau's proposed rule amendments to 20.6.4 NMAC. The exhibit contains both the original and amended petitions filed by the SWQB. As discussed in Ms. Pintado's written direct testimony (SWQB Exhibit 13) several minor editorial changes are suggested related to the Bureau's original and amended petitions.

6. A list and description of anticipated exhibits and technical materials to be relied upon by the Bureau's technical witnesses.

The following exhibits, attached hereto, will be offered by the SWQB and witnesses at the hearing. In conformity with the Procedural Order, Section 201A, the Bureau will make a

copy of the following exhibits available in its offices in Santa Fe, New Mexico as well as make an electronic copy available via its website. Additionally, in accordance with the Procedural Order, Sections 303A.6 and 403.B, each attached exhibit is marked sequentially as “SWQB Exhibit #.”

<u>SWQB Exhibit No.</u>	<u>Exhibit Description</u>
1.	James Hogan Testimony
2.	2013 Triennial Review Petition and Bases for Changes, June 25, 2014 and Amended Petition, October 20, 2014
3.	James Hogan Resume
4.	Public Notices for Triennial Review Scoping Period
5.	US EPA Letter of Preliminary Triennial Review Recommendations, December 4, 2013
6.	SWQB Response to US EPA Preliminary Recommendations February 19, 2014
7.	Public Notice for Triennial Review Public Discussion Draft and Public Comment Period, April 1, 2014
8.	Triennial Review Scoping Period Public Comments and SWQB Responses
9.	Triennial Discussion Draft Public Comments and SWQB Responses
10.	Letter of Notice to Small Business Regulatory Advisory Commission, July 2, 2014
11.	Affidavits for Legal Notices of Public Hearing for Triennial Review
12.	Triennial Review Websites – SWQB and WQCC

13. Kristine Pintado Testimony
14. Kristine Pintado Resume
15. SWQB Memo on MPN
16. 40 C.F.R. § 131.13
17. US EPA Nutrients Factsheet
18. SWQB Assessment Protocol for Nutrients
19. US EPA Letter of Comments to SWQB 2013 Triennial Review
Public Discussion Draft
20. 40 C.F.R. § 131.10(g)(1)-(6)
21. Temporary Standard Tables 1 and 2 (with explanatory notes)
22. US EPA WQS Regulations Advance Notice of Public Rulemaking
("ANPRM"): Water Quality Standards July 7, 1998, 63 Fed. Reg.
36,760-61
23. US EPA Proposed Water Quality Standards Regulatory
Clarifications Proposed Rule September 4, 2013, 78 Fed. Reg.
Page 54,544-45
24. 40 C.F.R. § 131.21
25. 40 C.F.R. § 131.20
26. 40 C.F.R. § 122.44(d)(I)(ii)
27. US EPA Record of Decision ("ROD") January 23, 2001
28. US EPA Final Rule Pesticide General Permit November 7, 2011,
76 Fed. Reg. 68,750-56
29. New Mexico Department of Game and Fish ("NMDG&F") Memo

March 22, 2014

30. Comparison of the US EPA Pesticide General Permit (“PGP”) vs. 20.6.4.16 NMAC
31. Chino Mines HP UAA “Application of the HP to STSIU Drainages”
32. Chino Mines Submittal Letter April 2011
33. SWQB Email to Chino Mines June 13, 2011
34. Correspondence: SWQB and Chino Mines
35. US EPA Letter of Technical Review to SWQB: Chino Mines HP UAA
36. Chino Mines Responses to Comments (“RTC”) November 2014
37. US EPA Factsheet for Recreational Criteria 2012
38. US EPA Bacteria Criteria 1986
39. Jodey Kougioulis Testimony – Hydrology Protocol (“HP”) and HP UAAs for Non-Perennial Waters
40. Jodey Kougioulis Resume
41. Mulatto Canyon Field Sheet
42. HP UAAs Non-Perennial Waters
43. HP UAAs Non-Perennial Waters Response to Comments
44. HP UAAs Non-Perennial Waters US EPA Transmittal Letter
45. HP UAAs Non-Perennial Waters US EPA Approval Letter
46. Deborah Sarabia Testimony – HP-based UAAs for Four Southern New Mexico Waters and the Animas River UAA

47. Deborah Sarabia Resume
48. HP-based UAA for Four Southern New Mexico Waters
49. Public Notice of Meeting and Comment Period for HP-based UAA: Four Southern New Mexico Waters
50. Written comments received on HP-based UAA: Four Southern New Mexico Waters
51. US EPA Technical Approval of HP-based UAA: Four Southern New Mexico Waters
52. Animas River UAA Final Draft
53. Animas River UAA Public Discussion Draft
54. SWQB Notice of Public Meeting and Request for Public Comment, November 20, 2013
55. Written Comments Received and SWQB Responses
56. EPA Technical Approval of the Animas River UAA
57. Bryan Dail Testimony
58. Bryan Dail Resume
59. USGS Map of the Gila River Near Gila Hot Springs
60. Road Map of the Gila River Near Gila Hot Springs
61. Specific Conductance of Select Hot Springs in the Gila Area
62. Specific Conductance of major Gila River Tributaries
63. Specific Conductance of Select Gila River tributaries
64. Gila Segment Memo, March 6, 2014
65. Mimbres River UAA

The Bureau hereby reserves the right to introduce and to move for admission of or opposition to any other competent evidence or exhibit in support of its proposed amendments or that of opposing parties or the public.

The Bureau will present and make available its staff and all exhibits at the April 14, 2014 Water Quality Control Commission meeting that is currently scheduled to begin at 9:00 a.m. in Apodaca Hall at the old PERA building, 1120 Paseo de Peralta, Santa Fe, New Mexico. No other hearing locations have been provided. The required proof of public notice is attached hereto as SWQB Exhibit 11.

Respectfully submitted, this the 12th day of December, 2014.

NEW MEXICO ENVIRONMENT DEPARTMENT



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *New Mexico Environment Department, Surface Water Quality Bureau's Notice of Intent to Present Technical Testimony* was served on the following parties on this the 12th day of December, 2014 via the stated delivery methods below:

Hand delivery:

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