



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

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In the Matter of: )  
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 )  
**PROPOSED AMENDMENTS** )  
**TO STANDARDS FOR** )  
**INTERSTATE AND INTRASTATE** )  
**SURFACE WATERS,** )  
**20.6.4 NMAC** )  
\_\_\_\_\_ )

**No. 14-05 (R)**

**FREEPORT-MCMORAN CHINO MINES COMPANY’S NOTICE OF INTENT TO ,  
PRESENT TECHNICAL TESTIMONY  
AND EXHIBITS**

Freeport-McMoRan Chino Mines Company (“Chino Mines Company” or “Chino”) files this, its Notice of Intent to Present Technical Testimony (“NOI”) pursuant to the Water Quality Act and the Water Quality Control Commission’s (“the Commission”) Guidelines for Water Quality Control Commission Regulation Hearings and the Procedural Order dated July 10<sup>th</sup>, 2014. This testimony will be in support of Chino’s petition that requests addition of site-specific aquatic life criteria for copper to NMAC 20.6.4 for certain surface waters located within the area known as the Chino Mines Smelter Tailings and Soil Investigation Unit (“STSIU”) near the towns of Bayard and Hurley in Grants County, New Mexico.

1. Entity for whom the witnesses will testify: Chino.
2. Technical Witnesses:

**Joseph S. Meyer, Ph.D.**

The CV and qualifications of the witness are attached in Exhibit D.

**Barry Fulton**

The CV and qualifications of the witness are attached in Exhibit F.

3. Testimony: The written direct testimony of Joseph S. Meyer, Ph.D. is attached as Exhibit E. Dr. Meyer is also expected to provide oral testimony lasting approximately 30 minutes. The written direct testimony of Barry Fulton is attached in Exhibit G. Mr. Fulton is also expected to provide oral testimony lasting approximately 15 minutes.

4. Recommended Amendments: Recommended changes to NMAC 20.6.4 are attached here as Exhibit H, First Amended Proposed Rule, and Exhibit I, Conditional Alternative Proposed Rule.

Chino's First Amended Proposed Rule removes portions of waters designated by the U.S. Fish and Wildlife Service as critical habitat for the Chiricahua Leopard Frog, or "CLF," from the waters to be covered by the proposed site-specific standard for copper in the Chino Mines STSIU. Although Chino's technical testimony supports the inclusion of the CLF critical habitat in the site specific standard, to allow for a proposal that can be approved by the Commission and EPA without raising questions about the need for additional interagency consultation, Chino is amending its proposal so that the site-specific copper criteria, if adopted by the Commission, would not apply to the designated Chiricahua Leopard Frog habitat.

Chino's Conditional Alternative Proposed Rule provides the Commission with alternative rule language to consider. The Conditional Alternative Proposed Rule language is intended to consolidate in one location, for ease of reference, the elements of the surface water quality standards for the waters proposed to be covered by the site-specific standard for copper, including the designated uses of the waters. This format is more consistent with other portions of 20.6.4 that apply to specific waters, and is not intended to be any different, in substance, than if the Commission adopted the language in Chino's First Amended Proposed Rule. The Conditional Alternative Proposed Rule, however, incorporates the separate proposal offered by

the Environment Department to classify portions of the waters as ephemeral (proposed section 20.6.4.809). Consequently, adoption of the Conditional Alternative Proposed Rule language is offered only if the Commission adopts NMED's proposal regarding the ephemeral waters. While Chino prefers its initial proposal, the alternative language also is acceptable, so long as waters proposed to be designated as ephemeral by the New Mexico Environment Department, based on the Use Attainability Analysis conducted using New Mexico Environment Department's Hydrology Protocol, is also approved by the Commission.

5. Exhibits: Chino will provide the following exhibits:

<b>Exhibit Designation</b>	<b>Description</b>
Exhibit A (replaces map attached to petition)	STSIU Surface Waters Map
Exhibit B (attached to petition)	2013 Revised Site-Specific Copper Toxicity Model Report for Smelter Tailings Soils IU Drainages – Chino Administrative Order on Consent
Exhibit C (attached to petition)	<i>B.A. Fulton and J.S. Meyer, "Development of a Regression Model to Predict Copper Toxicity to <i>Daphnia magna</i> and Site-Specific Copper Criteria Across Multiple Surface-Water Drainages in an Arid Landscape," Vol. 33, No. 8 pp. 1865-1873 (2014).</i> 6.
Exhibit D	Resume/CV of Joseph S. Meyer, Ph.D.
Exhibit E	Direct written testimony of Joseph S. Meyer, Ph.D.
Exhibit F	Resume/CV of Barry Fulton.
Exhibit G	Direct written testimony of Barry Fulton.
Exhibit H	Chino's First Amended Rule Proposal
Exhibit I	Chino's Conditional Alternative Rule Proposal

Please note that Exhibits B and C have already been filed with Chino's petition and are available online at <http://www.nmenv.state.nm.us/swqb/TriennialReview/2013/Freeport->

McMoRanChinoMinesCompanyPetition.pdf. For this reason, Chino will not re-submit Exhibits B and C with this NOI. If any party would like a physical copy of these Exhibits, please contact Gallagher & Kennedy, P.A. at the contact information provided below.

6. Statements of Position:

Chino takes the following positions in regard to the proposals submitted in these proceedings.

**a. Amigos Bravos**

i. Ephemeral and Intermittent Water Use Designations for Los Alamos National Laboratory

Chino does not support Amigos Bravos' proposal to change one of the designated uses for ephemeral and intermittent waters on Los Alamos National Laboratory's (LANLs) property from limited to marginal aquatic life.

ii. Aquatic Life Criteria for Aluminum

Chino does not support Amigos Bravos' proposal to replace the current hardness-based criteria for aluminum, which was approved by the Commission in 2010 and the U.S. Environmental Protection Agency (USEPA) in 2012, with the aquatic life criteria that were in place prior to the 2009 Triennial Review. Chino supports the current hardness-based aquatic life criteria for aluminum as currently stated in NMAC §20.6.4.900.

**b. New Mexico Environment Department (NMED)**

Chino supports NMED's proposal to add a new provision under 20.6.4.10.F NMAC to adopt temporary standards for surface waters in the state. Chino agrees with statements made by NMED that a provision for temporary standards would be a useful regulatory tool in many instances. Further, Chino is confident that NMED's proposal is consistent with the Clean Water Act ("CWA") as well as similar regulatory tools used by other states.

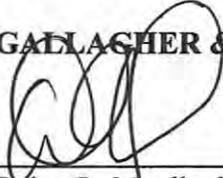
**c. Peabody Energy**

Chino supports Peabody Energy's proposal in this proceeding. The proposal appears to be based on sound scientific and policy principles.

7. Reservation of Rights: Chino reserves the right to call additional witnesses or introduce additional exhibits in response to the testimony and witnesses presented at hearing.

RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of December, 2014.

**GADLAGHER & KENNEDY, P.A.**



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this, Freeport-Chino's Notice of Intent to Present Technical Testimony has been served electronically and/or via hand delivery to the following parties on December 12, 2014:

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