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STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION

IN THE MATTER OF THE TRIENNIAL REVIEW OF STANDARDS FOR INTERSTATE AND INTRASTATE SURFACE WATERS, 20.6.4 NMAC

WQCC NO. 14-05 (R)

CHEVRON MINING INC.'S EXCEPTIONS TO THE
HEARING OFFICER'S PROPOSED STATEMENT OF REASONS AND FINAL ORDER

Chevron Mining Inc. ("CMI"), pursuant to the July 10, 2015 Scheduling Order, submits the following exceptions to the Hearing Officer's Proposed Statement of Reasons and Final Order ("Reasons"), submitted March 16, 2016.

1. Page 1, third unnumbered paragraph. The paragraph references Freeport-McMoRan Chino Mines Company's ("Chino") petition to amend the New Mexico Standards for Interstate and Intrastate Surface Waters, 20.6.4 NMAC, but does not reference the petitions filed by Amigos Bravos and Peabody Energy. The Reasons should be amended to reflect those petitions. CMI proposes that the following discussion be added to address the matter:

> In addition to Chino, Amigos Bravos and Peabody Energy filed petitions. Amigos Bravos, in their September 30, 2014 Proposed Amendments and Statement of Basis, (1) opposed the NMED's proposed addition of 20.6.4.10.F NMAC (temporary standards) and 20.6.4.10.H NMAC (inclusion of temporary standards in NPDES permits); (2) opposed changes to 20.6.4.16 NMAC (eliminating the mandatory public hearing requirement for Piscicide applications that do not require an NPDES permit); (3) proposed changing the "limited aquatic life" designated use to "marginal warmwater aquatic life" in 20.6.4.128 NMAC (ephemeral and intermittent portions of watercourses within Los Alamos National Laboratory); and (4) proposed replacement of the current hardness-based aquatic life criteria for Aluminum in 20.6.4.900 NMAC to the pre-2010 WQCC criteria of 87 µg/l (chronic) and 750 µg/l (acute). Peabody Energy, in their September 30, 2014 Proposed Revisions to 20.6.4 NMAC, proposed (1) modification of the Selenium criteria for wildlife habitat; and (2) changes to the criteria applicable to certain man-made ponds in 20.6.4.900.J NMAC.

2. Page 8, paragraph 17. The paragraph identifies the dates of the public hearing, the pre-filed written testimony, and the live technical testimony offered at the hearing. However, the paragraph does not reflect Peabody Energy's pre-hearing withdrawal of its proposed revisions or the agreement among NMED, LANS, the United States Department of Energy, and Amigos Bravos, resulting in the withdrawal of Amigos Bravos proposed change to 20.6.4.128 NMAC. CMI recommends that Paragraph 17 be replaced by the following:

> NMED, Chino Mines, Amigos Bravos, San Juan, Chevron and USDOE/LANS submitted pre-filed written direct and rebuttal technical testimony. Peabody Energy did not submit written technical testimony. Rather, it withdrew its proposed changes.
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> After submittal of the pre-filed written testimony, NMED, USDOE, LANS, and Amigos Bravos entered into a stipulation concerning the proposed changes to 20.6.4.128 NMAC. The Joint Stipulation Regarding Proposed Changes to 20.6.4.128 NMAC was submitted for the record in this proceeding on October 9, 2015. Under the Stipulation, Amigos Bravos agreed to withdraw its proposed changes to 20.6.4.128 NMAC. USDOE and LANS agreed to share "any new information, maps, or data obtained or developed since completion of the August 2007 'Use Attainability Analysis for Waters Located on Los Alamos National Laboratory as described in Sections 20.6.4.126 and 20.6.4.128 NMAC New Mexico Water Quality Standards July 17, 2005' that would assist in the identification of: (a) which Segment 128 waters are ephemeral and which are intermittent; (b) the existing uses of the Segment 128 waters; (c) the presence of macroinvertebrates or shellfish in the Segment 128 water; and (d) any significant change to the chemical, physical, or biological integrity of the Segment 128 waters. NMED agreed to share any new information it had. The parties agreed to meet and confer. If the parties agree on the appropriate level of protection, NMED agreed to petition the Commission to propose changes to 20.6.4.128 NMAC in consultation with the other parties. Amigos Bravos, USDOE or LANS may independently choose to petition the WQCC to propose the changes.
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> A public hearing was held in Santa Fe, New Mexico from October 13, 2015 through October 16, 2015. The WQCC heard technical testimony, including direct and cross examination, from NMED, Chino Mines, Amigos Bravos, San Juan, and Chevron. USDOE/LANS entered an appearance, but did not present technical testimony at the public hearing. Public comment was heard from many interested parties.

3. Page 8, Paragraph 18. This paragraph discusses the submittal of information, including testimony at the public hearing, but does not reflect the post-hearing submittals of the parties. CMI recommends that a new paragraph be inserted before Paragraph 18 as follows:

> After the public hearing, in accordance with the Scheduling Order, NMED, Chino Mines, Amigos Bravos, San Juan, and Chevron submitted closing arguments, proposed reasons, and final proposed changes to the Standards. In its post-hearing submittal, Amigos Bravos also withdrew its proposed changes to the Aluminum standards for aquatic life in 20.6.4.900 NMAC.

4. Pages 28 through 38, paragraph 77. This paragraph references NMED's proposed changes to 20.6.4.98 NMAC (intermittent waters) and 20.6.4.99 NMAC (perennial waters). However, the Reasons include the proposed changes to 20.6.4.900 NMAC (criteria applicable to existing, designated, or attainable uses unless otherwise specified). CMI assumes that the inclusion of those changes was a mistake and the Hearing Officer meant to include the proposed changes to 20.6.4.98 & 99 NMAC. CMI requests that the Reasons be revised to include the appropriate changes referenced.

5. Page 56, paragraph 126. This paragraph addresses NMED's proposed changes to 20.6.4.900 and 901 NMAC. The paragraph states that that the changes "are also necessary to reflect the application of the aluminum criteria by the EPA." CMI disagrees that the changes reflect the application of the criteria by EPA. Rather, the changes proposed by NMED reflect EPA's disapproval of the hardness-based criteria for waters with a pH of less than 6.5. They do not address what criteria EPA will apply to such waters. In fact, Dr. Dail, on behalf of NMED, and Dr. Gensemer, on behalf of CMI, testified that the EPA aluminum criteria were never intended to apply to waters with a pH of less than 6.5.

For the reasons stated above, CMI requests that the Hearing Officer's Proposed Statement of Reasons and Final Order be revised in accordance with the above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of ***Chevron Mining Inc.'s Comments on Hearing Officer's Proposed Statement of Reasons and Final Order*** was sent via electronic mail and/or hand delivery on April 15, 2016 to the following counsel of record:

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