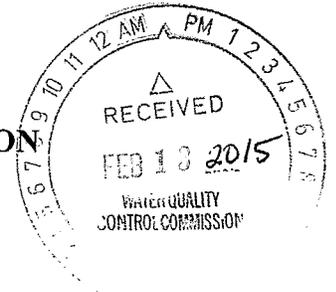


STATE OF NEW MEXICO  
BEFORE THE WATER QUALITY CONTROL COMMISSION



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 REBUTTAL 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* ("Guidelines"), and in accordance with the Procedural Order for WQCC No. 14-05 (R), its rebuttal technical testimony in support of the application to amend portions of Title 20, Chapter 6, Part 4 of the New Mexico Administrative Code ("NMAC").

The rebuttal technical testimony of the following Bureau witnesses is filed in complete and narrative form in the attached exhibits to this filing. To highlight the author and nature of rebuttal testimony, the following description is provided:

James Hogan, Ph.D. Dr. Hogan's testimony is presented to clarify issues raised by the San Juan Water Commission ("SJWC") about Sections 20.6.4.97 to -99 NMAC. His testimony addresses the SJWC's issues on the SWQB's proposed amendments to certain waters in Sections 20.6.4.101 to -899 NMAC. His testimony also responds to Amigos Bravos' proposal to change

the aquatic life use in Section 20.6.4.128 NMAC. Dr. Hogan's written rebuttal testimony is provided as SWQB Rebuttal Exhibit 1.

Kristine Pintado, M.S. Ms. Pintado's rebuttal testimony focuses on the temporary standard provision proposed by the SWQB as a new Subsection 20.6.4.10.F NMAC, as well as changes to the review of piscicide applications in Section 20.6.4.16 NMAC. Ms. Pintado's written rebuttal testimony is provided as SWQB Rebuttal Exhibit 7.

Jodey Kougioulis, B.S. Mr. Kougioulis's rebuttal testimony addresses two proposed revisions filed by Peabody Energy. The first proposed revision is to the selenium criteria for wildlife habitat use in Subsection 20.6.4.900.J NMAC. The second proposed revision is to Subsections 20.6.4.900.D and E NMAC to exempt artificial ponds and man-made wetlands from primary and secondary contact recreation criteria. His written rebuttal testimony is provided as SWQB Rebuttal Exhibit 11.

Bryan Dail, Ph.D. Dr. Dail's rebuttal testimony addresses two proposed revisions to amend water quality standards criteria. The first proposed revision is Amigos Bravos' proposal to replace the hardness-based water quality standard for aluminum with the U.S. Environmental Protection Agency's ("EPA") nationally recommended §304(a) criteria. The second proposed revision is for site-specific copper criteria based on a report conducted by Freeport-McMoRan Chino Mines. Dr. Dail's written testimony is provided as SWQB Rebuttal Exhibit 14.

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

The following exhibits, attached hereto, will be offered by the SWQB and witnesses at the hearing in addition to those listed in the Bureau's Notice of Intent to Present Technical

Testimony filed on December 12, 2014. 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, each attached exhibit is marked sequentially as “SWQB Rebuttal Exhibit #.”

**EXHIBIT NUMBER**

**TITLE OF EXHIBIT**

1. James Hogan Rebuttal Testimony.
2. Review of Clean Water Act (“CWA”) §101(a) Uses - Contact Recreation Uses for Selected Segments.
3. 2008-09 Triennial Review, Statement of Reasons, pp. 1, 81-83, and 143, Water Quality Control Commission (“WQCC”); October 14, 2010.
4. EPA Approval of Revisions to New Mexico’s Standards for Interstate and Intrastate Surface Waters, 20.6.4 NMAC; December 29, 2006.
5. Record of Decision (“ROD”) EPA Approval of Revisions to New Mexico’s Standards for Interstate and Intrastate Surface Waters, 20.6.4 NMAC; December 29, 2006.
6. Record of Decision (“ROD”) EPA Approval of Revisions to New Mexico’s Standards for Interstate and Intrastate Surface Waters, 20.6.4 NMAC; April 18, 2011.
7. Kristine Pintado Rebuttal Testimony.
8. EPA Region 8 Action on Multiple Sets of Temporary Modifications for Arsenic, letter dated June 20, 2013.
9. Decision of the General Counsel on Matters of Law Pursuant to 40 CFR Section 125.36(m), No. 58.
10. Technical Guidance Manual for Application and Review of Section 301(c) Variance Requests, p. 3; in EPA memo (M. Prothro), August 21, 1984.

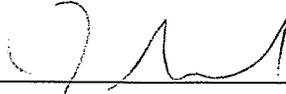
11. Jodey Kougioulis Rebuttal Testimony.
12. Ambient Water Quality Criterion For Selenium – Freshwater 2014; Factsheet EPA Office of Water 820-F-14-005, May 2014.
13. Email Correspondence; Peabody Exhibit 8 (Cochran Testimony) 2009 Triennial Review, WQCC 08-13 (R).
14. Bryan Dail Rebuttal Testimony.
15. Prehearing Testimony of Steven P. Canton, GEI Consultants, Inc. on Behalf of Colorado Mining Association in the Matter of the Adoption of Revisions to the Basic Standards and Methodologies for Surface Water, Regulation #31 (5 CCR 1002-31).
16. EPA Region 6 Review of Metals Criteria. EPA comments on Derivation of the Equation-based Aluminum Criteria, letter dated December 6, 2011.
17. Comments on Freeport-McMoRan Chino Mines Company's Draft Petition to Amend Surface Water Quality Standards (20.6.4 NMAC) and Request for Hearing (letter); K. Pintado (SWQB) to G. Chappelle (Gallagher & Kennedy), September 15, 2013.

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 June 9, 2015 Water Quality Control Commission meeting that is currently scheduled to begin at 9:00 a.m. at the New Mexico State Capitol Building, 490 Old Santa Fe Trail, Santa Fe, New Mexico. No other hearing locations have been provided.

Respectfully submitted, this the 13th day of February, 2015.

**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 Rebuttal Technical Testimony* was served on the following parties on this the 13<sup>th</sup> day of February, 2015, via the stated delivery methods below:

Hand delivery:

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U.S. Mail and Email:

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For Chevron Mining, Inc.:

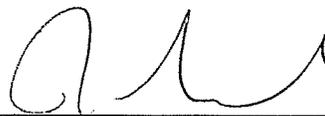
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New Mexico Environment Department

