

**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)

NOTICE OF WITNESS SUBSTITUTION

In the Notice of Intent to Present Technical Testimony filed on December 12, 2014 (“NOI”), the New Mexico Environment Department (“NMED”) Surface Water Quality Bureau (“SWQB”) included direct testimony from Ms. Deborah Sarabia. As of January 31, 2015, Ms. Sarabia is no longer employed by the NMED. As a result, she is unable to present direct testimony or be available for cross-examination at hearing on behalf of the SWQB concerning two proposals to amend the Surface Water Quality Standards. The SWQB hereby notifies all parties that Mr. Jodey Kougioulis and Dr. Bryan Dail will serve as substitute witnesses in place of Ms. Sarabia. Both Mr. Kougioulis and Dr. Dail are currently SWQB employees with pre-filed direct testimony (SWQB Exhibits 40 and 58). There will be no change to the content of the previously filed testimony by Ms. Sarabia (SWQB Exhibit 46), and no rebuttal testimony has been filed by any party regarding any of the testimony previously submitted by Ms. Sarabia.

Ms. Sarabia’s testimony will be divided between Mr. Kougioulis and Dr. Dail. At hearing, Mr. Kougioulis will adopt as his own testimony the Hydrology Protocol (“HP”) based Use Attainability Analysis (“UAA”) portion of SWQB Exhibit 46 and the “HP-based UAAs for

Four Southern New Mexico Waters and the Animas River UAA” portion in SWQB Exhibit 48. At hearing, Dr. Dail will adopt as his own testimony the Animas River UAA portion of SWQB Exhibits 46 and 52.

Ms. Sarabia submitted Direct Testimony on four HP UAAs for non-perennial waters (SWQB Exhibit 48). Mr. Kougioulis also submitted Direct Testimony (SWQB Exhibit 39) on HP UAAs for non-perennial waters and will be presenting testimony on the use of the HP and how it is used to determine the hydrologic classification of streams, specifically ephemeral streams, under 20.6.4.15.C NMAC. Mr. Kougioulis worked in consultation with Ms. Sarabia during the preparation of these HP UAAs and is adopting and sponsoring all testimony and exhibits related to the proposed revision to add four streams determined as ephemeral to 20.6.4.97.C NMAC. The proposal has not changed from that previously submitted in the NOI.

Mr. Kougioulis is able to attest to the accuracy of the documentation and determination that for the four non-perennial waters listed in the proposal:

- the recreational use that is currently being achieved is that of secondary contact;
- the aquatic life use that is currently being achieved is limited aquatic life;
- the marginal warmwater aquatic life and primary contact uses are unattainable due to naturally ephemeral conditions; and
- the highest attainable aquatic life use is limited aquatic life.

Through a reasoned analysis, Mr. Kougioulis agrees with the finding that it is not feasible to attain the designated use of marginal warmwater and primary contact because of factor 40 CFR 131.10(g)(2): natural, ephemeral or intermittent or low flow conditions or water levels prevent attainment of the use.

Ms. Sarabia submitted Direct Testimony on the Animas River UAA for the reason of assigning the attainable aquatic life use designations (SWQB Exhibit 52). Dr. Dail has also submitted Direct Testimony on the Mimbres River for the same type of UAA (SWQB Exhibit 65), and coordinated with Ms. Sarabia on her drafting of the Animas River UAA.

Dr. Dail is able to attest to the accuracy of the documentation and determination for the two assessment units in the Animas River UAA. The Animas River UAA concludes:

“The marginal coldwater (current designation for segment 20.6.4.403) and coolwater aquatic life uses both have a TMAX criterion of 29°C, but these uses describe different habitats. Marginal coldwater refers to habitat that would be coldwater were it not otherwise limited by certain conditions. Coolwater describes habitat that is naturally intermediate between cold and warm. Based on the conditions described in this UAA, coolwater is the best description of the attainable aquatic life use for the Animas River in New Mexico.”

The Animas River UAA study evaluated thermograph data and information on fish community thermal preferences, and provides well-reasoned support for a change to a coolwater Aquatic Life Use (“ALU”) for segments 20.6.4.403 and 20.6.4.404 NMAC. A review of the analysis of the thermograph data and consideration of the fish community data has lead Dr. Dail to affirm the conclusions of the Animas River UAA without reservation.

For the foregoing reasons, the SWQB notifies the Water Quality Control Commission (“Commission”) of the substitution of Mr. Kougioulis and Dr. Dail in place of Ms. Sarabia, in order that the Commission, other parties, as well as the public may cross examine a witness regarding the previously filed proposals and testimony as listed above.

Respectfully submitted, this the 6th day of March, 2015.

NEW MEXICO ENVIRONMENT DEPARTMENT



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Notice of Witness Substitution* was served on the following parties on this the 6th day of March, 2015, via the stated delivery methods below:

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