STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION

In the Matter of:

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

THE NEW MEXICO ENVIRONMENT DEPARTMENT SURFACE WATER QUALITY BUREAU’S PETITION TO AMEND THE STANDARDS FOR INTERSTATE AND INTRASTATE SURFACE WATERS (20.6.4 NMAC) AND REQUEST FOR HEARING

Pursuant to NMSA 1978, § 74-6-4(D) and 20.1.6.200 NMAC, the Surface Water Quality Bureau (“Bureau”) of the Water Protection Division (“Division”) of the New Mexico Environment Department (“Department”) hereby petitions the Water Quality Control Commission (“Commission”) to amend certain portions of the Commission’s regulations in 20.6.4 NMAC titled “Standards for Interstate and Intrastate Surface Waters” (“Standards”). The amendments are required by the federal Water Pollution Control Act (“Clean Water Act”), 33 U.S.C. §§ 1251-1387 (2006), and related federal regulation 40 CFR § 131.20. The Clean Water Act at 33 U.S.C. §1313(c)(1), and the Commission’s regulations at 20.6.4.10(A) NMAC, require the State to, at least once every three years, hold public hearings for the purpose of reviewing applicable water quality standards and proposing, as appropriate, necessary revisions to water quality standards. This process is generally known as the “Triennial Review.”

“The Commission is the state water pollution control agency for this state for all purposes of the federal [Clean Water Act]” (NMSA 1978, § 74-6-3(E)) and has the duty to “adopt water quality standards for surface and ground waters of the state based on credible scientific data and
other evidence appropriate under the Water Quality Act.” NMSA 1978, § 74-6-4(D). “The department of environment shall provide technical services … pursuant to the federal [Clean Water] Act.” NMSA 1978, § 74-6-4(F).

The U.S. Environmental Protection Agency last approved such revisions to New Mexico’s Standards in August 2017, therefore this petition is timely filed in August 2020.

**Jurisdictional Authority**

Pursuant to the Water Quality Act, NMSA 1978, §§ 74-6-1 to -17 (1967, as amended through 2019), the Commission is authorized to amend the Standards. Specifically, the Legislature has provided the Commission with the authority to “adopt water quality standards for surface and ground waters of the state based on credible scientific data and other evidence appropriate under the Water Quality Act.” NMSA 1978, § 74-6-4(D) (2009). Amendments must comply with NMSA 1978, Section 74-6-6 (1993) and 20.1.6 NMAC, which set forth procedural requirements for rulemaking proceedings before the Commission.

**Hearing Date & Hearing Officer**

The Bureau requests the Commission set the hearing date for the July 13, 2021, Commission meeting. The Bureau expects the public hearing to last for four days, depending on the level and extent of public and stakeholder involvement and participation. The Bureau is in the process of soliciting pre-hearing comment(s) from the public and stakeholders, as noted below, to assist in expediting the rulemaking process.

To facilitate the public hearing, the Bureau requests that the Commission appoint a Hearing Officer and authorize the Hearing Officer to adopt a prehearing schedule, including but not limited to issuance of a procedural and/or scheduling order, conduct the hearing, and prepare post-hearing recommendations for the Commission. See 20.1.6.100(B) NMAC (providing for appointment of a
hearing officer and specifying authority of the hearing officer). The Bureau further requests that the Commission expressly limit the scope of this rulemaking to the amendments proposed by the Department in this Petition, and any logical outgrowths thereof.

The Bureau’s proposed Order for Hearing and Appointment of Hearing Officer is attached hereto as Attachment 1.

Public Involvement & Outreach

The Bureau plans to publish a “Public Comment Draft” of the proposed amendments to solicit public comment for thirty days no later than November 2, 2020. All comments received will be posted online following the close of the public comment period. The Bureau will review the comments received and, if warranted, make appropriate revisions to the proposed amendments to 20.6.4 NMAC. The Bureau plans to hold two public meetings during the public comment period to solicit feedback on the proposed amendments, via “webex” online sessions in light of COVID-19 public health restrictions.

Bureau staff have conducted outreach with stakeholders, by meeting with stakeholder groups remotely via online sessions, and are available to continue to meet with stakeholders, as requested, for discussions regarding their specific issues of concern.

In addition, the Bureau has initiated dialogue with tribes through emails to tribal leaders and representatives of 24 tribes seeking input on the proposed amendments to 20.6.4 NMAC.

Proposed Amendments & Statement of Reasons

The Bureau’s Proposed Amendments to the New Mexico Standards for Interstate and Intrastate Surface Waters, 20.6.4 NMAC, and the Statement of Reasons for the proposed changes are attached hereto as Attachments 2 and 3, respectively.

WHEREFORE, the Bureau requests that the Commission set this Petition for hearing on
July 13, 2021, and appoint a Hearing Officer in this matter.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT
OFFICE OF GENERAL COUNSEL

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Attachments:

Proposed Order for Hearing and Appointment of Hearing Officer

Proposed Amendments to the New Mexico Standards for Interstate and Intrastate Surface Waters, 20.6.4 NMAC

Statement of Reasons for Proposed Amendments to 20.6.4 NMAC
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing New Mexico Environment Department Surface Water Quality Bureau’s Petition to Amend the Standards for Interstate and Intrastate Surface Waters (20.6.4 NMAC) and Request for Hearing, including attachments as indicated, was served on the following via electronic mail on August 19, 2020:

Administrator
Water Quality Control Commission
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/s/ John Verheul
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