

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

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

No. WQCC 20-51 (R)

AMIGOS BRAVOS' NOTICE OF FILING EXHIBIT 24

Amigos Bravos hereby gives notice of filing Exhibit 24, Amigos Bravos' [Second Revised] Proposed Amendments to 20.6.4 NMAC, attached hereto. This exhibit replaces Exhibit 10, Amigo Bravos' [First Revised] Proposed Amendments to 20.6.4 NMAC.

Amigos Bravos has revised four of its proposals to amend 20.6.4 NMAC in direct response to rebuttal testimony filed by the parties in this matter. Amigos Bravos has revised its proposals to:

1. 20.6.4.6.C Objective,
2. 20.6.4.14.F Effluent Characterization,
3. 20.6.4.7.B(1) "Baseflow", and
4. 20.6.4.7.E(3) "Existing use", which it has withdrawn.

Respectfully submitted,

/s/ Tannis Fox
Tannis Fox
Western Environmental Law Center
208 Paseo del Pueblo Sur, #602
Taos, New Mexico 87571
505.629.0732
fox@westernlaw.org

Attorneys for Amigos Bravos

Certificate of Service

I certify that a copy of the foregoing pleading was emailed to the following counsel on July 8, 2021:

Annie Maxfield
John Verheul
Assistants General Counsel
Office of General Counsel
New Mexico Environment Department
121 Tijeras, NE, Suite 1000
Albuquerque, New Mexico 87102
Annie.maxfield@state.nm.us
John.verheul@state.nm.us

Alexander.arensberg@squirepb.com

Jolene McCaleb
Elizabeth Taylor
San Juan Water Commission
P.O. Box 2540
Corrales, New Mexico 87048-2540
jmccaleb@taylormccaleb.com
etaylor@taylormccaleb.com

Louis W. Rose
Kari Olson
Montgomery & Andrews, P.A.
P.O. Box 2307
Santa Fe, New Mexico 87504-2307
lrise@montand.com
kolson@montand.com

Stuart R. Butzier
Christina C. Sheehan
Modrall Sperling Roehl Harris & Sis, P.A.
P.O. Box 2168
Albuquerque, New Mexico 87103-2168
srb@modrall.com
ccs@modrall.com

Maxine McReynolds
Office of Laboratory Counsel
Los Alamos National Laboratory
P.O. Box 1663, MS A187
Los Alamos, New Mexico 87545
mcreynolds@lanl.gov

Dalva Moellenberg
Gallagher & Kennedy
1239 Paseo de Peralta
Santa Fe, New Mexico 87501-2758
dln@gknet.com

Silas R. DeRoma
Stephen Jochem
U.S. Department of Energy
National Nuclear Security Administration
Los Alamos Site Office
3747 West Jemez Road
Lost Alamos, New Mexico 87544
Silas.deroma@nnsa.doe.gov
Stephen.jochem@nnsa.doe.gov

Kyle Harwood
Luke Pierpont
Egolf + Ferlic + Martinez + Harwood, LLC
123 W. San Francisco St., Floor 2
Santa Fe, New Mexico 87501
kyle@egolfaw.com
luke@egolfaw.com

Carolyn McIntosh
Alexander Arensberg
Squire Patton Boggs LLP
1801 California Street, Suite 4900
Denver, Colorado 80202
Carolyn.mcintosh@squirepb.com

Charles de Saillan
Staff Attorney
New Mexico Environmental Law Center
1405 Luisa Street, Suite 5
Santa Fe, New Mexico 87505-4074
cdesaillan@nmelc.org

Robert F. Sanchez
Assistant Attorney General
Office of the Attorney General
P.O. Box 1508
Santa Fe, New Mexico 87504-1508
rfsanchez@nmag.gov

/s/ Tannis Fox
Tannis Fox

**AMIGOS BRAVOS' [SECOND REVISED] PROPOSED AMENDMENTS TO
20.6.4 NMAC¹**

Climate Change

Amigos Bravos proposes to add the following at 20.6.4.6.C NMAC and to delete the New Mexico Environment Department's (NMED) proposed 20.6.4.6.D NMAC:

20.6.4.6 OBJECTIVE:

...

C. A further purpose of these surface water quality regulations is to respond to the threats of climate change to water quality and provide resiliency to protect and enhance water quality. The quality of New Mexico surface waters is being affected by climate change. New Mexico's climate is getting hotter and drier, resulting in earlier springs, hotter summers, and less predictable winters. New Mexico is experiencing more intense droughts and a greater proportion of precipitation falling as rain instead of snow. Snowpack is shrinking and earlier snowmelts contribute to lower stream flows at critical times of the year when the reduced availability of water has greater environmental consequences. Increased water temperatures resulting from increased air temperatures tend to lead to lower levels of dissolved oxygen in water, resulting in increased stress on the fish, insects, crustaceans and other aquatic animals that rely on oxygen. More intense precipitation events and increased evaporation rates lead to increased runoff and more pollution, including increased nutrients sediment, and salt that wash into surface waters. Development of New Mexico surface water quality standards should take into account the importance of protecting of water quality in light of climate change.

D.€. Pursuant to Subsection A of Section 74-6-12 NMSA 1978, this part does not grant to the water quality control commission or to any other entity the power to take away or modify property rights in water.

~~D. These surface water quality standards serve to address the inherent threats to water quality due to climate change.~~

¹ Amigos Bravos' proposed changes to the regulations are shown in blue underline and ~~red strikethrough~~; the New Mexico Environment Department's proposed changes are in **red**; and the existing regulations are in black.

Amigos Bravos proposes to amend NMED’s proposed definition of “climate change” at 20.6.4.7.C(4) NMAC as follows:

20.6.4.7 DEFINITIONS: Terms defined in the New Mexico Water Quality Act, but not defined in this part will have the meaning given in the Water Quality Act.

...

C. Terms beginning with the letter “C”.

...

(4) “Climate change” refers to any significant change in the measures of climate lasting for an extended period of time, typically decades or longer, and includes major changes in temperature, precipitation, wind patterns or other weather-related effects. Climate change may be due to natural processes or human-caused changes of the atmosphere, or a combination of the two. Humans are largely responsible for recent climate change.

Contaminants of Emerging Concern

Amigos Bravos proposes to amend NMED’s proposed definition of “contaminants of emerging concern” at 20.6.4.7.C(8) NMAC as follows:

20.6.4.7 DEFINITIONS

...

C. Terms beginning with the letter “C”.

...

(7) “Contaminants of emerging concern” or “CECs” refer to water contaminants including, but not limited to, per- and polyfluoroalkyl substances, pharmaceuticals and personal care products that may cause significant ecological or human health effects at low concentrations and are not already considered “toxic pollutants” by the department. CECs are generally chemical compounds that, although suspected to potentially have impacts, may not have regulatory standards, and the concentrations to which negative impacts are observed have not been fully studied.

Amigos Bravos proposes adding the following at 20.6.4.14.F NMAC:²

20.6.4.14 SAMPLING AND ANALYSIS

...

F. Effluent Characterization: The department may require monitoring, analysis, and reporting of a contaminant of emerging concern as a condition of a federal permit under Section 401 of the federal Clean Water Act.

² This language is revised slightly from that originally proposed by Amigos Bravos, and incorporates most of NMED’s proposed changes to Amigos Bravos’ original language. *See* Shelley Reb. Test. at 20:21 – 21:2 [NMED Ex. 106].

Baseflow and Effluent Dominated

Amigos Bravos proposes the following revisions to NMED’s proposed definition of “baseflow” at 20.6.4.7.B(1) NMAC, and proposes that the Commission **not** adopt NMED’s definition for “effluent dominated” at 20.6.4.7.E(2) NMAC:

20.6.4.7 DEFINITIONS

...

B. Terms beginning with the letter “B”.

(1) **“Baseflow”** refers to the sustained flow volume of a stream or river. In natural systems, baseflow is comprised from regional groundwater inflow and local shallow subsurface inflow that is temporarily stored in the watershed during snowmelt and rain events and slowly released to the stream or river over time. In some ~~effluent dominated~~ systems, baseflow is comprised predominantly from effluent with limited subsurface contributions. Baseflow in both scenarios is critical for sustaining flow in streams and rivers over seasonal and longer timeframes.

...

E. Terms beginning with the letter “E”.

...

~~(2) “Effluent dominated” refers to a water that has, over a 12-month average, more than three-quarters of its baseflow attributed to discharges from a permitted effluent discharge. Waters that are effluent dominated are of significant value by providing aquatic life and wildlife habitat.~~

Limited Aquatic Life

Amigos Bravos proposes to delete NMED’s proposed changes to the definition of “limited aquatic life,” proposing to replace the “ephemeral or intermittent water” with the term “low-flow,” and to retain the current definition at 20.6.4.7.L(2):

20.6.4.7

...

L. Terms beginning with the letter “L”.

(2) **“Limited aquatic life”** as a designated use, means the surface water is capable of supporting only a limited community of aquatic life. This subcategory includes surface waters that support aquatic species selectively adapted to take advantage of naturally occurring rapid environmental changes, ~~[ephemeral or intermittent water,]~~ ephemeral or intermittent, low-flow, high turbidity, fluctuating temperature, low dissolved oxygen content or unique chemical characteristics.