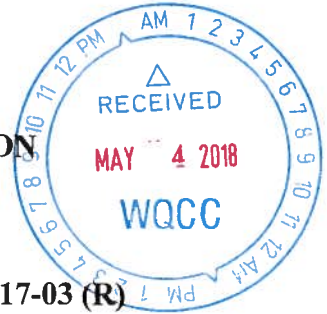


**STATE OF NEW MEXICO  
BEFORE THE WATER QUALITY CONTROL COMMISSION**



**In the Matter of:**

**PROPOSED AMENDMENTS TO  
GROUND AND SURFACE WATER  
PROTECTION REGULATIONS,  
20.6.2 NMAC**

**No. WQCC 17-03 (R)**

**JOINT MOTION TO WITHDRAW THE HEARING OFFICER'S REPORT  
OR, ALTERNATIVELY, TO WAIVE THE DEADLINE UNDER 20.6.2.305.C NMAC**

Pursuant to the New Mexico Water Quality Control Commission's ("Commission") procedural regulations at 20.1.6.100.B and 20.1.6.207 NMAC, the Parties<sup>1</sup> to this proceeding hereby move the Commission to withdraw the *Hearing Officer Report* filed on April 6, 2018 ("Report") or, in the alternative, to waive the 60-day deadline under 20.1.6.306.C NMAC for the Commission to reach a decision on the New Mexico Environment Department's Petition to Amend the Ground and Surface Water Protection Regulations (20.6.2. NMAC) ("Department's Petition"). The Parties also request that the Commission postpone deliberations on the Department's Petition until its July meeting.

The Parties understand and appreciate the Commission's desire to move forward with deliberations on this matter as urgently as possible, as expressed by the Chair on November 17, 2017. Hearing Transcript Vol. 4, 1033:24-1035:9. However, the Department as the Petitioner in this matter, and the other Parties to this rulemaking, respectfully request that the Commission withdraw the Hearing Officer's Report or otherwise waive the deadline under 20.1.6.306.C

---

<sup>1</sup> The Parties are The New Mexico Environment Department; Amigos Bravos; Gila River Information Project; The New Mexico Municipal League; The New Mexico Mining Association; Dairy Producers of New Mexico and Dairy Industry Group for a Clean Environment; The New Mexico Energy, Minerals and Natural Resources Department; The City of Roswell; Laun-Dry; Los Alamos National Security, LLC, William C. Olson; Rio Grande Resources Corporation; American Magnesium, LLC; and New Mexico Copper Corporation; and United States Air Force/Department of Defense.

NMAC. The Parties understand the Report to be a draft on which the Hearing Officer seeks comment and input from the Parties. However, the filing of the Report on April 6, 2018 triggered a 60-day time limit for the Commission to reach a final decision in this matter, pursuant to 20.1.6.306.C NMAC.

The Parties require additional time to evaluate the draft Report and compile and submit their comments. Currently, the Parties are proposing to collaborate on a joint proposed report that would be submitted to the Hearing Officer for her review and approval, and which she would then file in place of the existing Report. The Hearing Officer held a call with the Parties on May 3, 2018, during which this approach was discussed, as well as the time frames in which the Parties would be able to submit their joint proposal. The Hearing Officer supported the approach and stated that she would issue a new procedural order extending the deadlines for the Parties to submit their comments on the draft Report. However, the Hearing Officer indicated that she did not believe she could withdraw that Report for the purpose of resetting the timeline under 20.1.6.306.C NMAC; rather, the Hearing Officer opined that it was the Commission that would have to take action to change or waive those deadlines under the rule.

It is in the interest of all the Parties, the Commission, and the quality of the final rule amendments eventually adopted for the Commission to deliberate on as complete and accurate a Hearing Officer's Report as possible once the 60-day time limit is triggered. That is best achieved by treating the Report as a draft upon which the Parties may file exceptions, followed by a final Hearing Officer Report filed with the Commission upon the Hearing Officer's consideration of the Parties' proposed joint report. Withdrawal of the Report will reset the 60-day time limit, allowing the Parties additional time to submit their proposed joint report, and the Hearing Officer time to review and issue a revised final report to file with the Commission. The Parties would also request

that the Commission remove deliberations on the Department's Petition from its May 8, 2018 meeting agenda and plan to deliberate on the Petition in July.

By this motion, the Parties agree that they will not raise any challenge to the Commission's decision in this proceeding on the basis that the Commission's decision was reached more than 60 days from the filing of the first Hearing Officer's Report on April 6, 2018.

### **CONCLUSION**

For the foregoing reasons, the Commission should withdraw the Report, or in the alternative, issue an order waiving the 60-day deadline under 20.1.6.306.C NMAC for making a decision on the Department's Petition. The Commission should also postpone deliberations on the Department's Petition until its July meeting.

Respectfully submitted,

**THE NEW MEXICO ENVIRONMENT  
DEPARTMENT OFFICE OF GENERAL  
COUNSEL**



---

Lara Katz  
John Verheul  
Assistants General Counsel  
Post Office Box 5469  
Santa Fe, New Mexico 87505  
lara.katz@state.nm.us  
john.verheul@state.nm.us

*Counsel for the New Mexico Environment  
Department*

**GALLAGHER & KENNEDY, P.A.**

Electronically approved 05/03/2018

Dalva L. Moellenberg  
Gallagher & Kennedy, P.A.  
1239 Paseo de Peralta  
Santa Fe, New Mexico 87501  
DLM@gknet.com

*Counsel for Dairy Producers of New Mexico  
and Dairy Industry Group for a Clean  
Environment; and the New Mexico Mining  
Association*

**DOMENICI LAW FIRM, P.C.**

Telephonically approved 05/03/2018

Pete Domenici  
Lorraine Hollingsworth  
Reed Easterwood  
Domenici Law Firm, P.C.  
320 Gold Avenue SW, suite 1000  
Albuquerque, New Mexico 87102  
pdomenici@domenicilaw.com  
lhollingsworth@domenicilaw.com  
reasterwood@domenicilaw.com

*Counsel for City of Roswell and Laun Dry*

**MODRALL, SPERLING, ROEHL,  
HARRIS & SISK, P.A.**

Electronically approved 05/03/2018

Stuart R. Butzier  
Christina Sheehan  
P.O. Box 2168  
Albuquerque, New Mexico 87103-2168  
stuart.butzier@modrall.com  
christina.sheehan@modrall.com

*Counsel for American Magnesium, LLC; Rio  
Grande Resources Corp.; and New Mexico  
Copper Corp.*

**THE NEW MEXICO  
ENVIRONMENTAL LAW CENTER**

Electronically approved 05/03/2018

Jaimie Park  
Doug Meiklejohn  
1405 Luisa St. #5  
Santa Fe, New Mexico 87505-4074  
jpark@nmelc.org

*Counsel for Amigos Bravos and Gila  
Resources Information Project*

**MONTGOMERY & ANDREWS, P.A.**

Electronically approved 05/04/2018

Louis W. Rose  
Kari E. Olson  
P.O. Box 2307  
Santa Fe, New Mexico 87504-2307  
lrose@montand.com  
kolson@montand.com

Timothy A. Dolan  
Office of Laboratory Counsel  
Los Alamos National Laboratory  
P.O. Box 1663, MS A187  
Los Alamos, New Mexico 87545  
tdolan@lanl.gov

*Counsel for Los Alamos National Security,  
LLC*

**AIR FORCE LEGAL OPERATIONS  
AGENCY**

Telephonically approved 05/04/2018

Michael L. Casillo  
AFLOA/JACE  
1500 W. Perimeter Rd, Suite 1500  
Joint Base Andrews, Maryland 20762  
michael.l.casillo2.civ@mail.mil

*Counsel for United States Air Force*

**STEIN & BROCKMAN, P.A.**

Electronically approved 05/03/2018

Jay F. Stein  
P.O. Box 2067  
Santa Fe, NM 87504-2067  
jfstein@newmexicowaterlaw.com

*Counsel for New Mexico Municipal League*

**NEW MEXICO ENERGY, MINERALS,  
AND NATURAL RESOURCES  
DEPARTMENT**

Electronically approved 05/03/2018

Bill Brancard  
Cheryl Bada  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505  
Bill.Brancard@state.nm.us  
Cheryl.Bada@state.nm.us

*Counsel for Energy, Minerals and Natural  
Resources Department*

**WILLIAM OLSON**

Electronically approved 05/03/2018

William Olson  
14 Cosmic Way  
Lamy, New Mexico 87540  
billjeanie.olson@gmail.com

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was filed with the WQCC Administrator and was served on the following via electronic mail on May 4, 2018:

Stephen Vigil  
Office of the Attorney General  
P.O. Box 1508  
Santa Fe, New Mexico 87504-1508  
svigil@nmag.gov  
*Counsel for the Water Quality Control Commission*

  
\_\_\_\_\_  
Lara Katz