

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)

**NEW MEXICO ENVIRONMENT DEPARTMENT'S MOTION TO
WITHDRAW THE HEARING OFFICER'S REPORT AND
VACATE THE POST SCHEDULING ORDER**

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 New Mexico Environment Department (the Department) submits this motion requesting the Hearing Officer to withdraw the *Hearing Officer Report* filed on April 6, 2018 ("Report") and vacate the *Post Scheduling Order Exceptions to the Hearing Officer Report* filed on April 6, 2018. ("Exceptions Order"). The Department circulated a draft of this Motion amongst the parties on April 25, 2018. The following parties concurred in the motion: 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. The following parties opposed the motion: The United States Air Force/Department of Defense. The following parties had not responded by the time of filing: Amigos Bravos; Gila River Information Project.

The Department understands and appreciates 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, respectfully requests that the Hearing Officer withdraw the Report and vacate the Exceptions Order. The Department understands the Report to be a draft on which the Hearing Officer seeks comment and input from the parties in the form of exceptions. However, 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 Department requires additional time to evaluate the draft Report and compile and submit its exceptions. Withdrawal of the Report (perhaps including a statement that the Report was intended as a draft on which the parties could comment and submit exceptions) will reset the 60-day time limit, allowing the Department and other parties additional time to submit their exceptions, and the Hearing Officer time to compile a revised final report to file with the Commission.

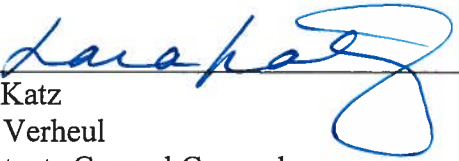
It is in the interest of all the parties, the Commission, and the quality of the final rule amendments eventually adopted for the Commission to deliberate on as accurate and complete a Hearing Officer's Report as possible once the 60-day time limit is triggered. That is best achieved by treating the 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 and incorporation of the exceptions. To that end, the Hearing Officer should issue any scheduling or procedural orders she deems necessary to complete that process. The Department requests any such orders allow the parties an additional 30 days from the date of filing of this Motion to submit exceptions on the draft Report.

CONCLUSION

For the foregoing reasons, the Hearing Officer should withdraw the Report, vacate the Exceptions Order, and issue such other scheduling and/or procedural orders as she deems necessary to complete the process contemplated above.

Respectfully submitted,

**NEW MEXICO ENVIRONMENT DEPARTMENT
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By:  _____

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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 April 27, 2018:

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