

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)**

**THE NEW MEXICO ENVIRONMENT DEPARTMENT'S COMMENTS ON THE  
REVISED HEARING OFFICER'S REPORT FILED JUNE 29, 2018**

Pursuant to the New Mexico Water Quality Control Commission's ("Commission") procedural regulations at 20.1.6.305 NMAC, the New Mexico Environment Department ("Department" or "NMED") submits the following comments on the Revised Hearing Officer's Report filed June 29, 2018 ("Revised Report").

**Comment No. 1**

On June 15, 2018, all the Parties to this proceeding, with the exception of Amigos Bravos and the Gila Resources Information Project ("AB/GRIP"), filed a Joint Proposed Report in lieu of filing individual exceptions to the Hearing Officer's Report filed on April 6, 2018 ("First Report"). AB/GRIP elected not to participate in the Joint Proposed Report, and instead filed their own exceptions to the First Report.

The Joint Proposed Report set forth the positions and rationales of all the Parties (except AB/GRIP) on each of the proposed rule changes before the Commission. For each issue, a brief summary, generally no longer than a page, was provided for each party who took a position on that issue, along with citations to the record where the full arguments and positions could be found if the Commission wanted to review them. The formatting of the Joint Proposed Report was intended to provide the Commission with a "road map" of the positions and arguments on each issue so as to facilitate more efficient deliberations on the proposed amendments.

In the Revised Report, the Hearing Officer largely adopted the format and summaries that were submitted by the parties to the Joint Proposed Report. However, the Hearing Officer appears to have copied and pasted AB/GRIP's entire 20-page argument on variances and the 4-page argument on sampling requirements for demonstrating technical infeasibility into the sections of the Joint Proposed Report that covered those issues. This essentially gives AB/GRIP twenty times more "air time" on variances and four times more on sampling for technical infeasibility in the Revised Report than any other party that took a position on those issues.

NMED objects to the verbatim inclusion of AB/GRIP's exceptions within the Revised Report because it violates the purpose and structure of the Joint Proposed Report, and results in the Revised Report highlighting and giving far more prominence to AB/GRIP's positions at the expense of all the other parties. If the Hearing Officer wished to include AB/GRIP's positions and arguments in the Revised Report, she should have followed the structure used for every other party and issue, and included brief summaries of AB/GRIP's positions and arguments, while including citations to the record (including AB/GRIP's Exceptions filing) where AB/GRIP's full positions and arguments could be found. Including the full text of AB/GRIP's exceptions verbatim defeats the purpose of the Joint Proposed Report, and does not assist the Commission in conducting efficient deliberations.

### **Comment No. 2**

NMED objects to the inclusion of citations to "NMSA 1978, 72-12-1 & History" within the Authority section of the Revised Report. That statute governs property rights to groundwater in New Mexico, and provides authority to the New Mexico State Engineer to administer such rights; it does not pertain in any way to the Water Quality Act, and does not provide any authority to the Commission to adopt regulations governing water quality. It is therefore inappropriate to

include that statute, or any other statute governing the authority of the New Mexico State Engineer over water rights, in the section of the Revised Report setting out the Commission's authority for this rulemaking.

### CONCLUSION

NMED suggests the Commission take appropriate action to modify the Revised Report consistent with the purpose of the Joint Proposed Report in order to facilitate efficient deliberations and ensure consistency throughout the Revised Report. The portions of the Revised Report to which NMED objects are as follows:

- Page 10, Paragraph 46;
- Page 10, the first two sentences of Paragraph 47 and citations;
- Page 39 through the first 5 lines of Page 61;
- Page 118 beginning at line 5 through Page 121 at subsection "D."

Respectfully submitted,

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

By:



---

John Verheul  
Lara Katz  
Assistants General Counsel  
Post Office Box 5469  
Santa Fe, New Mexico 87502  
Email: John.Verheul@state.nm.us  
Lara.Katz@state.nm.us

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was filed with the Commission Administrator and was served on the following via electronic mail on July 2, 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*

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

Jaimie Park  
Doug Meiklejohn  
New Mexico Environmental Law Center  
1405 Luisa St. #5  
Santa Fe, New Mexico 87505-4074  
jpark@nmelc.org  
*Counsel for Amigos Bravos and Gila Resources Information Project*

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*

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*

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*

Pete Domenici  
Lorraine Hollingsworth  
Reed Easterwood  
Domenici Law Firm, P.C.  
320 Gold Avenue SW, suite 1000  
Albuquerque, New Mexico 87102  
pdomenici@domicilaw.com  
lhollingsworth@domicilaw.com  
reasterwood@domicilaw.com  
*Counsel for City of Roswell and Laun Dry*

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

Jay F. Stein  
Stein & Brockman, P.A.  
P.O. Box 2067  
Santa Fe, NM 87504-2067  
jfstein@newmexicowaterlaw.com  
*Counsel for New Mexico Municipal League*

Stuart Butzier  
Christina Sheehan  
Modrall, Sperling, Roehl, Harris & Sisk,  
P.A.  
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.*



---

Lara Katz