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IN THE MATTER OF THE AMENDMENT  
OF 20.1.6 NMAC:  
CONCISE EXPLANATORY STATEMENT

In accordance with the authority vested in it by Sections 14-4-5.8, 74-6-4(E), and 74-6-6 NMSA 1978, to adopt rules and regulations necessary for carrying out its statutory duties, the New Mexico Water Quality Control Commission (the “Commission”) held a public hearing during the course of its regularly scheduled meeting on January 9, 2018, to amend Rule 20.1.6 NMAC, which sets forth the Commission’s rulemaking procedures. In 2017, the New Mexico Legislature passed House Bill 58 (“HB 58”) addressing public participation in the rulemaking process. 2017 N.M. Laws, ch. 137 § 3. HB 58’s amendments to the State Rules Act, NMSA 1978, Sections 14-4-1 to -11 (“SRA”), establish requirements for executive agency rulemaking notices, post-hearing steps, and maintenance of and access to the rulemaking record. The Water Quality Act also establishes specific rulemaking requirements for the Commission. See NMSA 1978, § 74-6-6. The SRA allows agencies to adopt their own or continue existing procedures that provide at least as much opportunity for public participation as the New Mexico Attorney General’s default rulemaking procedures. NMSA 1978, § 14-4-5.8. Because it is unlikely that any default rules promulgated by the Attorney General will be able to fully comply with the Water Quality Act while remaining generally applicable for a diverse group of executive agencies the Commission voted to amend 20.1.6 NMAC. On January 22, 2018, the Commission issued an order and statement of reasons amending 20.1.6 NMAC. The order and statement of reasons “is the official version of the commission’s action[.]” 20.1.6.306(F) NMAC. Due to procedural considerations, 20.1.6 NMAC is to be repealed, and the amendments discussed in the Commission’s order and statement of reasons are to be incorporated into a replacement 20.1.6 NMAC.

<sup>1</sup> The Attorney General has proposed default procedural rules available at <https://www.nmag.gov/house-bill-58-public-comment.aspx>.

