

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



In the Matter of:)
)
)
PROPOSED AMENDMENTS TO)
SURFACE WATER QUALITY)
STANDARDS FOR SAN ISIDRO)
ARROYO AND TRIBUTARIES)
20.6.4 NMAC)
)

No. WQCC 19-03 (R)

**PEABODY NATURAL RESOURCES COMPANY’S PETITION
TO AMEND THE GROUND AND SURFACE WATER
PROTECTION REGULATIONS, AND REQUEST FOR HEARING**

Peabody Natural Resources Company (PNRC) hereby petitions the Water Quality Control Commission (Commission) to amend certain portions of the Commission's regulations at §20.6.4.97(C)(1) in Title 20, Chapter 6, Part 4, of the New Mexico Administrative Code (NMAC) titled “*Surface Water Quality Standards*”(Standards”). Use Attainability Analyses performed for portions of San Isidro Arroyo watershed—including streams in the vicinity of PNRC’s Lee Ranch Mine, specifically Mulatto Canyon, Arroyo Tinaja, San Isidro Arroyo, Doctor Arroyo, and tributaries thereof—indicate designated use of these waterbodies should be changed and/or new water quality segments should be designated.

Jurisdictional Authority

Pursuant to the Water Quality Act, NMSA 1978, §§ 74-6-1 to -17 (1967, as amended through 2013), the Commission is authorized to amend the Standards. Specifically, the Legislature has provided the Commission with authority to adopt water quality standards for surface and ground waters of the state based on “credible scientific data and other evidence appropriate under the Water Quality Act.” NMSA 1978, § 74-6-4(D) (2009). Standards amendments must comply with NMSA

1978, Section 74-6-6 (1993), which sets forth procedural requirements for such proceedings before the Commission.

Hearing Date & Hearing Officer

PNRC requests the Commission set the hearing date to consider this Petition that is convenient to the Commission and PNRC. PNRC expects the public hearing to last for up to one day, depending on the level and extent of public involvement and participation. PNRC will solicit pre-hearing comment(s) from the public to assist in expediting the public hearing and adoption process.

To facilitate the public hearing, PNRC requests that the Commission appoint a Hearing Officer and authorize the Hearing Officer to conduct the hearing. *See* 20.1.6.100.B NMAC (providing for appointment of a hearing officer and specifying authority of the hearing officer).

PNRC's proposed *Order for hearing and Appointment of Hearing Officer* is attached hereto as Attachment 1.

Proposed Amendments & Statement of Reasons

PNRC's Proposed Amendments to the New Mexico Surface Water Quality Standards, 20.6.4 NMAC, and the Statement of Reasons for the proposed changes are attached hereto as Attachments 2 and 3, respectively.

WHEREFORE, PNRC requests that the Commission set this Petition for hearing on (insert date), and appoint a Hearing Officer in this matter.

Respectfully submitted,



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Attorneys for Peabody Natural Resources Company

Attachments:

1. *Proposed Order for Hearing and Appointment of Hearing Officer*
2. *Proposed Amendments to §20.6.4.97(C)(1) and Statement of Reasons*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Petition to Amend the Surface Water Quality Standards and Request for Hearing*, including attachments as indicated, was hand-delivered to the Hearing Clerk and served via electronic mail to the following on April 5, 2019:

Mr. John Verheul
New Mexico Environment Department
Office of General Counsel
121 Tijeras Avenue NE, Ste. 1000
Albuquerque, NM 87102
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MODRALL SPERLING ROEHL HARRIS
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Stuart R. Butzier

W3395886

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20.6.4 NMAC)	

ORDER FOR HEARING AND APPOINTMENT OF HEARING OFFICER

The New Mexico Water Quality Control Commission ("Commission"), through its duly appointed Chairperson, hereby orders that the Petition by the New Mexico Environment Department, Surface Water Quality Bureau ("Bureau"), as referenced above, be set for public hearing pursuant to the Water Quality Act, NMSA 1978, Sections 74-6-1 to -17 (1967, as amended through 2013), and the Commission's Rulemaking Procedures at 20.1.6 NMAC ("Rulemaking Procedures"). The hearing shall commence on _____, 2019, and continue until completion.

The Commission designates _____ as the Commission's Hearing Officer for the hearing. The Hearing Officer is hereby granted all authority and power of the Commission as provided in the Rulemaking Procedures at 20.1.6.100 NMAC, or as may be otherwise provided by law.

NOW ORDERED, this the ____ day of April, 2019 by the Commission and as attested by the Chairperson's signature below.

_____, Commission Chair **ATTACHMENT 1**

PROPOSED AMENDMENT TO §20.6.4.97(C)(1) AND STATEMENT OF REASONS

Based upon a Use Attainability Analysis (UAA) dated October 2018 for PNRRC's Lee Ranch Mine and supporting materials, which UAA will be presented hereafter to the Commission with PNRRC's Statement of Intent to Present Technical Testimony, PNRRC Proposes the following changes to §20.6.4.97(C)(1) NMAC:

~~(k) San Isidro arroyo from the Lee Ranch mine facility outfall upstream of Tinaja Arroyo;~~

~~(l) Tinaja arroyo from San Isidro arroyo upstream to Mulatto canyon; and~~

~~(m) Mulatto canyon from Tinaja arroyo upstream to 1 mile northeast of the Cibola national forest boundary~~

(k) San Isidro Arroyo and all tributaries from its confluence with Arroyo Chico to its headwaters, excluding Doctor Springs and the receiving portion of Doctor Arroyo up to 1,000 feet downstream of the spring

The proposed language may be adjusted based on comments received during the public comment period. These changes are justified by the results of Level 1 Hydrology Protocol evaluations, supporting regional hydrologic studies, and mine-specific hydrologic information as provided in the Lee Ranch Mine's permit from the New Mexico Mining and Minerals Division. PNRRC will demonstrate in this proceeding that it is not feasible for the drainages in question to attain the designated use of marginal warm water equatic life and primary contact because of the factor defined at 40 CFR 131.10(g)(2): natural, ephemeral, or intermittent or low flow conditions or water levels prevent the attainment of the use. Therefore, PNRRC will demonstrate in this proceeding the appropriateness of classifying the drainages under §20.5.4.97(C)(1) NMAC for ephemeral waters with the appropriate limited aquatic life use and secondary contact designation.

ATTACHMENT 2