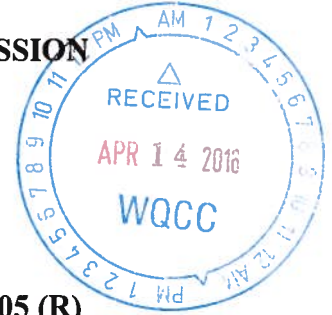


**STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION**



_____)
_____)
In the Matter of: _____)
_____)
PROPOSED AMENDMENTS TO _____)
STANDARDS FOR INTERSTATE _____)
AND INTRASTATE WATERS, _____)
20.6.4 NMAC _____)
_____)

No. WQCC 14-05 (R)

**NEW MEXICO ENVIRONMENT DEPARTMENT’S EXCEPTIONS TO THE
HEARING OFFICER’S PROPOSED STATEMENT OF REASONS AND FINAL ORDER**

In accordance with the Department’s Rulemaking Procedures, 20.1.9 NMAC, the Guidelines for Water Quality Control Commission (“WQCC”) Regulation Hearings, and the Order Setting Remaining Schedule, the New Mexico Environment Department (“Department”) hereby submits these exceptions to the Hearing Officer’s Proposed Statement of Reasons (“SOR”) and Final Order in this matter.

Exceptions

1. The Department generally supports the Hearing Officer’s Proposed SOR and Final Order.
2. The Department notes that the SOR does not follow the order of the New Mexico Administrative Code (NMAC). For example, the SOR starts with discussion of proposed changes to 20.6.4.10.F NMAC on page 10. Later in the SOR (i.e., on page 60) there is discussion regarding the changes to definitions in 20.6.4.7 NMAC. While the language is consistent with the Department’s Proposed Statement of Reasons, it may be more logical for the WQCC to consistently order the changes with the numeric language of the

NMAC, such that the SOR begin with changes to the definitions in 20.6.4.7 NMAC. The changes could be made by taking the following steps:

- a. On page 73, move “Part XIII. Changes to Definitions in 20.6.4.7 NMAC” to the beginning of the report; rename and number as “Part I. Changes to Definitions in 20.6.4.7 NMAC.”
 - b. On pages 28-37, paragraph 77, delete the text and tables shown as Section 20.6.4.900 NMAC in Part VII as it is duplicative and out of place. It is appropriately covered later in the SOR in Part XII.
 - c. Such changes will also require a renumbering of subsequent parts and paragraphs throughout the document.
3. The Department notes that the sentence on the top of page 23 should be corrected by adding the underlined text: “Specific to this proposal is 40 C.F.R. § 131.10(g) (2) in which the “natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met.”
 4. The Department notes that paragraphs 78-83 on pages 38-39 of the SOR are out of place, and should be removed from Part VII, inserted into Part IV following paragraph 60, and renumbered accordingly.
 5. The Department notes that on page 43 of the SOR, in paragraphs 86 and 89, “DEPARTMENT” should not be in all caps. This is a format error that was also in the Department’s Proposed Statement of Reasons.

6. The Department notes that on page 49, paragraph 110, “13” should be deleted from the second sentence. This is a transposition error that was also in the Department’s Proposed Statement of Reasons.
7. The Department notes that on page 50 there is a change to the margins starting with paragraph 112 that should be corrected for consistency throughout the document. There is a similar change to the margins in paragraphs 118-120 on pages 53-54 that should be corrected.
8. The Department notes that on page 53, paragraph 119, line 6, the terms “Due of” should be changed to “Due to”. This grammatical error was also in the Department’s Proposed Statement of Reasons.
9. The Department notes that on page 55, paragraph 122, line 11, the word “and” which occurs after “flows” should be deleted. This grammatical error was also in the Department’s Proposed Statement of Reasons.
10. The Department notes that on page 78, paragraph 146, line 6, the term “warmwater” should be inserted after “marginal” in the phrase “marginal aquatic life” to correctly describe the designated aquatic life use assigned to intermittent streams in Section 20.6.4.98 NMAC.
11. The Department notes that the Attachment A for both the SOR and the Department’s Closing Arguments and Proposed Final Rule includes the proposal for Sections 20.6.4.808 and 20.6.4.809 NMAC from Freeport-McMoRan Chino Mines’ site-specific copper proposal, however only Section 809 is discussed in the SOR (i.e., paragraph 142 on pages 75-77). The Department supports the substance of this proposal and included it in Attachment A, but formatted Sections 808 and 809 in NMAC style, and consistent

with descriptions for the ephemeral streams proposed under 20.6.4.97 NMAC for Section 809. The Department suggests these non-substantive changes if the WQCC approves the site-specific copper proposal.

12. The Department notes that on the proposed Final Order on page 85, in the footnote, “Appellate” is misspelled as “APPEALLATE”.

Respectfully submitted, this 14th day of April, 2016.

NEW MEXICO ENVIRONMENT DEPARTMENT



John Verheul
Kathryn S. Becker
Assistant General Counsels
P.O. Box 5469
1190 S. St. Francis Dr., Suite N-4050
Santa Fe, New Mexico 87502-5469
Tel (505) 383-2063
Fax (505) 827-1628
john.verheul@state.nm.us
kathryn.becker@state.nm.us

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the New Mexico Environment Department's Exceptions to the Hearing Officer's Proposed Statement of Reasons and Final Order on the following parties on this the 14th day of April, 2016 via the stated delivery methods below:

Hand delivery:

Ms. Pam Castaneda, Administrator
Water Quality Control Commission
Room S-2102, Harold Runnels Building
1190 St. Francis Dr.
Santa Fe, New Mexico 87505

Electronic Mail:

For Freeport-McMoRan Chino Mines Company:

Dalva L. Moellenberg
Germaine R. Chappelle
Gallagher & Kennedy, P.A.
1239 Paseo de Peralta
Santa Fe, NM 87501
Phone: 505-982-9523
Email: d1m@gknet.com
Email: germaine.chappelle@gknet.com

For Peabody Energy:

Stuart R. Butzier
Modrall, Sperling, Roehl, Harris & Sisk, P.A.
P.O. Box 9318
Santa Fe, NM 87504-9318
Phone: 505-848-1832
Email: sbutzier@modrall.com

For Amigos Bravos:

Erik Schlenker-Goodrich
Kyle Tisdell
Western Environmental Law Center
208 Paseo Del Pueblo Sur, #602
Taos, NM 87571
Phone: 575-613-4197
Email: eriksg@westernlaw.org

Email: tisdell@westernlaw.org

For San Juan Water Commission:

Jolene L. McCaleb
Taylor & McCaleb, P.A.
P.O. Box 2540
Corrales, New Mexico 87048-2540
Phone: 505-888-6600
Email: jmccaleb@taylormccaleb.com

For Chevron Mining, Inc.:

Louis W. Rose
Kari E. Olson
Montgomery & Andrews, P.A.
P.O. Box 2307
Santa Fe, New Mexico 87504-2307
Phone: 505-982-3873
Email: lrose@montand.com
Email: kolson@montand.com

For Los Alamos National Security, LLC and the United States Department of Energy:

Timothy A. Dolan
Office of Laboratory Counsel
Los Alamos National Laboratory
P.O. Box 1663, MS A187
Los Alamos, NM 87545
Phone: 505-667-7512
Email: tdolan@lanl.gov

Lisa Cummings
Staff Attorney
Office of Counsel
Los Alamos Site Office
U.S. Department of Energy
528 35th Street
Los Alamos, NM 87544-2201
Phone: 505-667-4667
Email: Lisa.Cummings@nnsa.doe.gov



John Verheul