

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

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)	
In the Matter of:)	
)	
PROPOSED AMENDMENTS TO)	No. WQCC 20-51 (R)
<i>STANDARDS FOR INTERSTATE AND</i>)	
<i>INTRASTATE SURFACE WATERS,</i>)	
20.6.4 NMAC)	
)	
)	

**NEW MEXICO ENVIRONMENT DEPARTMENT'S
NOTICE OF INTENT TO PRESENT REBUTTAL TESTIMONY**

Pursuant to 20.1.6.202 NMAC, the *Procedural Order* issued by the Hearing Officer on November 9, 2020, and the *Order Granting Extension* issued by the Hearing Officer on April 1, 2021, the New Mexico Environment Department (“Department” or “NMED”) submits this Notice of Intent to Present Rebuttal Testimony for the hearing in this matter currently scheduled to begin on July 13, 2021.

1. Entity for whom the witnesses will testify

The witnesses will testify for the Surface Water Quality Bureau of the Water Protection Division of the Department.

2. Identity of witnesses

The Department will call the following witnesses to present rebuttal testimony at the hearing:

Shelly Lemon is the Chief of the Department’s Surface Water Quality Bureau. Her resume was previously filed as NMED Exhibit 5. Ms. Lemon’s written rebuttal testimony is attached as NMED Exhibit 106.

Kris Barrios is the Program Manager for the Monitoring, Assessment, and Standards Section within the Department’s Surface Water Quality Bureau. His resume was previously filed as NMED Exhibit 6. Mr. Barrios’ written rebuttal testimony is attached as NMED Exhibit 107.

Diana Aranda is a Scientist/Specialist-Advanced on the Standards, Planning, and Reporting Team with the Department’s Surface Water Quality Bureau. Her resume was previously filed as NMED Exhibit 7. Ms. Aranda’s written rebuttal testimony is attached as NMED Exhibit 108.

Jennifer Fullam is the Standards, Planning and Reporting Team Supervisor and the Water Quality Standards Coordinator with the Department’s Surface Water Quality Bureau. Her resume describing her educational and professional background was previously filed as NMED Exhibit 8. A copy of Ms. Fullam’s written direct rebuttal is attached as NMED Exhibit 109.

3. Estimated duration of rebuttal testimony of witnesses

Ms. Lemon	20 minutes
Mr. Barrios	10 minutes
Ms. Aranda	10 minutes
Ms. Fullam	20 minutes

4. List of exhibits to be offered by the Department at the hearing

An updated list of exhibits that the Department intends to offer into evidence in this matter is attached to this Notice, rebuttal exhibits, beginning with **NMED Exhibit 106**, were appended onto the end of the list of exhibits from the Department’s Notice of Intent to Present Technical Testimony (“NOI”), filed on May 3, 2021, in order to provide a single, complete list of all exhibits

for the hearing. Only exhibits which were not filed with the NOI, or which have been amended, are included with this rebuttal filing. The Department reserves the right to introduce and move for admission of any other exhibit in support of rebuttal testimony at the hearing.

Respectfully submitted,

**NEW MEXICO ENVIRONMENT DEPARTMENT
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *New Mexico Environment Department's Notice of Intent to Present Technical Testimony* was filed with the WQCC Administrator and served on the following via electronic mail on June 22, 2021:

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John Verheul

NMED Exhibit List - WQCC 20-51 (R)

NMED Exhibit 1	Written Direct Testimony of Shelly Lemon
NMED Exhibit 2	Written Direct Testimony of Kris Barrios
NMED Exhibit 3	Written Direct Testimony of Diana Aranda
NMED Exhibit 4	Written Direct Testimony of Jennifer Fullam
NMED Exhibit 5	Resume of Shelly Lemon
NMED Exhibit 6	Resume of Kris Barrios
NMED Exhibit 7	Resume of Diana Aranda
NMED Exhibit 8	Resume of Jennifer Fullam
NMED Exhibit 9	NMED's Proposed Amended Rule - 20.6.4 NMAC
NMED Exhibit 10	Act, Federal - Clean Water Act § 101(a)(2)
NMED Exhibit 11	Act, Federal - Clean Water Act § 303
NMED Exhibit 12	Act, Federal - Clean Water Act § 304(a)
NMED Exhibit 13	Act, State - Water Quality Act. NMSA 1978, § 74-6-3
NMED Exhibit 14	Act, State - Water Quality Act. NMSA 1978, § 74-6-4
NMED Exhibit 15	Act, State - Water Quality Act. NMSA 1978, § 74-6-6
NMED Exhibit 16	Act, State - Water Quality Act. NMSA 1978, § 74-6-10
NMED Exhibit 17	Act, State - State-Tribal Collaboration Act. NMSA 1978, § 11-18-3
NMED Exhibit 18	Act, State - State Rules Act. NMSA 1978, § 14-4-2
NMED Exhibit 19	Act, State - State Rules Act. NMSA 1978, § 14-4-5.2
NMED Exhibit 20	Act, State - State Rules Act. NMSA 1978, § 14-4A-4
NMED Exhibit 21	Regulation, Federal - 40 C.F.R. § 131.20 State review and revision of water quality standards
NMED Exhibit 22	Regulation, Federal - 40 C.F.R. § 131.10 Designated Uses

NMED Exhibit 23	Regulation, Federal - 40 C.F.R. § 131.6 WQS Requirements
NMED Exhibit 24	Regulation, Federal - 40 C.F.R. § 131.2 Purpose
NMED Exhibit 25	Regulation, Federal - 40 C.F.R. § 131.11 Criteria
NMED Exhibit 26	Regulation, Federal - 40 C.F.R. § 131.3 Definitions
NMED Exhibit 27	Regulation, Federal - 40 C.F.R. § 131.12 Antidegradation
NMED Exhibit 28	Regulation, Federal 40 - C.F.R. §§ 25.1 through 25.5
NMED Exhibit 29	Regulation, State - 20.1.6.201 and 202 NMAC
NMED Exhibit 30	Regulation, State - 20.6.2.2001 and 2002 NMAC
NMED Exhibit 31	WQCC Delegation of Responsibilities to Environmental Improvement Division (NMED) 1989
NMED Exhibit 32	EPA's Response for 2017 Triennial Review, WQCC 14-05 (R)
NMED Exhibit 33	EPA's Climate Change Website. https://www.epa.gov/climate-change
NMED Exhibit 34	Effects of Watershed Topography, Soils, Land Use, and Climate on Baseflow Hydrology in Humid Regions: A Review
NMED Exhibit 35	EPA's Website - Contaminants of Emerging Concern
NMED Exhibit 36	EPA's WQC RU Microcystins and Cylindrospermopsin
NMED Exhibit 37	EPA's WQC RU Microcystins and Cylindrospermopsin Technical Support Document Implementation Guidance (Draft)
NMED Exhibit 38	NMED HH-OO Comparison Table
NMED Exhibit 39	EPA's WQC ALU HH-OO Benzene
NMED Exhibit 40	EPA's WQC ALU Recommended Acute and Chronic Aquatic Life Criteria
NMED Exhibit 41	NMED's ALU Comparison Table
NMED Exhibit 42	EPA's WQC ALU Aluminum Guidance (Final)
NMED Exhibit 43	EPA's WQC ALU Aluminum Implementation Guidance

NMED Exhibit 44	EPA's WQC ALU Aluminum Technical Support Document (Draft) for BLM missing WQ Parameters
NMED Exhibit 45	NMED's Comparison of Hardness-Based vs MLR for Aluminum
NMED Exhibit 46	NMED's Chart Showing Comparison of Hardness-Based vs Multi-Linear Regression Exceedance Ratio Difference for Aluminum in Upper Rio Grande
NMED Exhibit 47	NMED's Chart Showing Summary of Hardness-Based vs Multi-Linear Regression Exceedances for Aluminum
NMED Exhibit 48	Excerpts from WQCC 03-05 (R) SOR for Arsenic (Pages 89-91)
NMED Exhibit 49	Map of Arsenic Concentrations
NMED Exhibit 50	EPA's WQC ALU Copper
NMED Exhibit 51	EPA's WQC ALU Copper Implementation Training
NMED Exhibit 52	EPA's WQC ALU Organoleptics Table
NMED Exhibit 53	Email from State Records Center and Archives Regarding Redundant Dash
NMED Exhibit 54	Email from State Records Center and Archives Regarding Amendment Notation
NMED Exhibit 55	Maps Referencing Cañon Largo
NMED Exhibit 56	NMED's Designated Use Analysis - Existing Use Analysis of Recreational Designated Use for Classified Waters - 20.6.4.101-20.6.4.899 NMAC
NMED Exhibit 57	NMED's Notification Regarding Existing Use Analysis for Recreational Use to Tribes
NMED Exhibit 58	NMED's Notification Regarding Existing Use Analysis for Recreational Use to Stakeholders
NMED Exhibit 59	NMED's Designated Use Analysis - Use Attainability Analysis Classified Non-Perennial Tributaries
NMED Exhibit 60	Excerpts from WQCC 03-05 (R) SOR for moving non-perennial waters to 20.6.4.98 (Pages 50-57)

NMED Exhibit 61	EPA's WQC ALU Ammonia Criteria
NMED Exhibit 62	EPA's Letter to Smithee Regarding Existing Use
NMED Exhibit 63	State of New Mexico's Water Quality Management Plan and Continuing Planning Process Appendix C - Hydrology Protocol
NMED Exhibit 64	State of New Mexico's Water Quality Management Plan and Continuing Planning Process Standards Section
NMED Exhibit 65	WQCC 08-13 (R) SOR for 2010 Triennial Review Regarding Expedited Hydrology Protocol
NMED Exhibit 66	EPA's WQC ALU Aluminum Criteria 1988 as it Pertains to pH
NMED Exhibit 67	WQCC 08-13 (R) SOR for 2010 Triennial Review Regarding Aluminum
NMED Exhibit 68	EPA's Response and Technical Support Document for 2010 Amendments
NMED Exhibit 69	EPA's Technical Support Document for 2017 Triennial Review, WQCC 14-05 (R), Regarding Aluminum
NMED Exhibit 70	EPA's WQC ALU Cadmium 2016
NMED Exhibit 71	NMED's Comparison for Cadmium and Zinc Criteria
NMED Exhibit 72	Joint Stipulation between U.S. Department of Energy, Los Alamos National Security, LLC, Amigos Bravos and New Mexico Environment Department
NMED Exhibit 73	NMED's Designated Use Analysis - Existing Use Analysis for Effluent Canyon, Upper S-Site Canyon and Two-Mile Canyon from Water Canyon upstream to its confluence with upper Two-Mile Canyon
NMED Exhibit 74	Excerpts from WQCC 03-05 (R) SOR for 2005 Triennial Review Regarding Designated Uses for Unclassified Ephemeral and Intermittent Waters (Pages 41-43)
NMED Exhibit 75	Landscape History and Processes on the Pajarito Plateau Northern New Mexico, Rocky Mountain Cell, Friends of the Pleistocene Field Trip Guidebook September 12-15. Reneau and McDonald.
NMED Exhibit 76	About Intellus New Mexico
NMED Exhibit 77	NMED's Notification of Initiation of Triennial Review to Tribes

NMED Exhibit 78	NMED's Notification of Public Comment Period to Tribes
NMED Exhibit 79	NMED's Notification of Public Comment Period Extension to Tribes
NMED Exhibit 80	NMED's Notification of Public Hearing to Tribes
NMED Exhibit 81	NMED's Notification of Self-Identification as Stakeholders to Public through GovDelivery
NMED Exhibit 82	NMED's Presentation - Stakeholder Discussions for the 2020 Triennial Review of Water Quality Standards
NMED Exhibit 83	NMED's Notification of Public Comment Period published on the Surface Water Quality Bureau Webpages
NMED Exhibit 84	NMED's Notification of Public Comment Period sent via GovDelivery
NMED Exhibit 85	NMED's Notification of Public Comment sent via GovDelivery - Report and Recipient List
NMED Exhibit 86	NMED's Notification of Public Comment Period sent to Stakeholders
NMED Exhibit 87	NMED's Presentation - Public Informational Meeting on the Department's Triennial Review of Standards for Interstate and Intrastate Surface Waters
NMED Exhibit 88	Public Comment Received from U.S. EPA Region 6
NMED Exhibit 89	Public Comment Received from Environmental Defense Fund
NMED Exhibit 90	Public Comment Received from Los Alamos National Laboratory-Triad National Security, LLC
NMED Exhibit 91	Public Comment Received from New Mexico Mining Association
NMED Exhibit 92	Public Comment Received from San Juan Water Commission
NMED Exhibit 93	Public Comment Received from Chevron Mining, Inc.-Questa Mine
NMED Exhibit 94	Public Comment Received from Concerned Citizens for Nuclear Safety
NMED Exhibit 95	Public Comment Received from Amigos Bravos, Audubon New Mexico, Defenders of Wildlife, Flower Hill Institute, Gila Resources Information Project, Honor Our Pueblo Existence, Molino de la Isla Organics LLC, New Mexico Environmental Law Center, New Mexico Wild, Rio Grande Restoration, Rovers and Birds, Rio Grande Chapter of the Sierra Club,

Tewa Women United, Trout Unlimited, Upper Pecos Watershed Alliance,
and Western Environmental Law Center

- NMED Exhibit 96 NMED's Notice of Public Hearing published in the New Mexico Register Volume XXX, Issue 2
- NMED Exhibit 97 NMED's Notification of Public Hearing sent to Stakeholders
- NMED Exhibit 98 NMED's Notice of Public Hearing published in the Albuquerque Journal
- NMED Exhibit 99 NMED's Notice of Public Hearing published in The Santa Fe New Mexican
- NMED Exhibit 100 NMED's Notification of Public Hearing sent to NMED District Managers
- NMED Exhibit 101 NMED's Notification of Public Hearing published on the Surface Water Quality Bureau's Webpage
- NMED Exhibit 102 NMED's Notification of Public Hearing sent via the Surface Water Quality Bureau's Subscribed GovDelivery Listserv
- NMED Exhibit 103 NMED's Notification of Public Hearing published on the New Mexico Sunshine Portal
- NMED Exhibit 104 NMED's Notification of Public Hearing sent to New Mexico Legislative Council Service
- NMED Exhibit 105 NMED's Notification of Public Hearing sent to New Mexico Small Business Regulatory Advisory Commission
- NMED Exhibit 106 Written Rebuttal Testimony of Shelly Lemon
- NMED Exhibit 107 Written Rebuttal Testimony of Kris Barrios
- NMED Exhibit 108 Written Rebuttal Testimony of Diana Aranda
- NMED Exhibit 109 Written Rebuttal Testimony of Jennifer Fullam
- NMED Exhibit 110 NMED's Revised Proposed Amended Rule - 20.6.4 NMAC
- NMED Exhibit 111 Regulation, Federal - 40 C.F.R. § 136
- NMED Exhibit 112 Regulation, Federal - 40 C.F.R. § 122.44
- NMED Exhibit 113 Email from LANL Regarding Perennial Waters within LANL

- NMED Exhibit 114 WQCC SOR for 2000 Triennial Review Regarding Compliance with Water Quality Standards
- NMED Exhibit 115 Act, Federal - Clean Water Act § 401
- NMED Exhibit 116 Act, Federal - Clean Water Act § 502
- NMED Exhibit 117 EPA's Toxic Pollutant List Webpage
- NMED Exhibit 118 EPA's Emerging Contaminants and Federal Facility Contaminants of Concern Webpage
- NMED Exhibit 119 EPA's IRIS Chemical Assessment Summary 1, 4 Dioxane
- NMED Exhibit 120 Standard Methods for the Examination of Water and Wastewater, Part 1050-B
- NMED Exhibit 121 Regulation, Federal - 40 C.F.R. § 131.5
- NMED Exhibit 122 NMED's CORRECTED Presentation - Stakeholder Discussions for the 2020 Triennial Review of Water Quality Standards
- NMED Exhibit 123 EPA's 1997 Memo Regarding Natural Background
- NMED Exhibit 124 NMED's CORRECTED Designated Use Analysis - Existing Use Analysis for Effluent Canyon, Upper S-Site Canyon and Twomile Canyon from Pajarito Canyon upstream to its confluence with upper Twomile Canyon
- NMED Exhibit 125 EPA Region 6 Development of Minimum Quantification Levels (October 30, 2007)
- NMED Exhibit 126 NMED's Chronology of Events for 2015 Joint Stipulation Regarding Proposed Changes to 20.6.2.128 NMAC
- NMED Exhibit 127 Email from LANL to NMED on January 30, 2020 Regarding Hydrology Protocol Data
- NMED Exhibit 128 Email from LANL to NMED on April 8, 2020 Regarding Hydrology Protocol Data
- NMED Exhibit 129 WQCC's 03-05(R) Direct Testimony from NMED Regarding 20.6.4.126 and 20.6.4.128 NMAC

- NMED Exhibit 130 NMED's Map Delineating Current NMAC with Hydrology Protocol Findings
- NMED Exhibit 131 20.6.1 NMAC circa 1991
- NMED Exhibit 132 *The Regents of the University of California v. New Mexico Water Quality Control Commission*. 2004-NMCA-073, 136 N.M. 45
- NMED Exhibit 133 2002 Triennial Review Hearing Transcript. May 13, 2002
- NMED Exhibit 134 U.S. EPA Office of Water Policy and Technical Guidance Memorandum on Interpretation and Implementation of Aquatic Life Metals Criteria (1993)
- NMED Exhibit 135 U.S. Fish & Wildlife Service – A Water Quality Assessment of Four Intermittent Streams in Los Alamos County, New Mexico (July 2002)
- NMED Exhibit 136 Excerpt from EPA NPDES Writers' Manual (September 2010)
- NMED Exhibit 137 Regulation, Federal - 40 C.F.R. § 122.2
- NMED Exhibit 138 Excerpt from EPA Technical Support Document for Water Quality-based Toxics Control - Chapter 3: Effluent Characterization (1991)