

STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION

IN THE MATTER OF PETITION TO
NOMINATE SURFACE WATERS
DESIGNATED AS SPECIAL TROUT WATERS, OR
WILD AND SCENIC RIVERS, OR LOCATED WITHIN
A WILDERNESS, PARK, MONUMENT OR REFUGE
AS OUTSTANDING NATIONAL RESOURCE WATERS, NO. WQCC 24-46 (R)

NEW MEXICO ENVIRONMENT DEPARTMENT,

PETITIONER.

PETITION FOR RULEMAKING AND PROPOSED STATEMENT OF REASONS

Pursuant Sections 74-6-4(D) and 74-6-6 of the New Mexico Water Quality Act, NMSA 1978, §§ 74-6-1 to -17, and 20.6.4.9 NMAC, the Water Protection Division of the New Mexico Environment Department (Department) petitions the Water Quality Control Commission (Commission) to classify certain surface waters of the state that are designated as special trout waters, or wild and scenic rivers, or located within a wilderness, park, monument or refuge as outstanding national resource waters (ONRWs).

Pursuant to 20.6.4.9(A), a statement of reasons is included below. The *2024 ONRW Designation Nominations* is included as *Attachment 1* to this Petition. Included as *Attachment 2* is a copy of the entire rule, including the proposed regulatory change, as required by 20.1.6.200(B) NMAC.

The Department requests that the Commission consider this Petition at its September 10, 2024, public meeting and that the Commission set this matter for hearing during the month of December 2024 and appoint a hearing officer. The Department estimates that a hearing for this ONRW nomination will take approximately two days.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT

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PROPOSED STATEMENT OF REASONS

I. Jurisdictional Authority and Statutory and Regulatory Requirements

1. The Water Quality Control Commission (Commission) is authorized by NMSA 1978, Section 74-6-(D) to adopt and amend water quality standards for surface waters of the State “based on credible scientific data and other evidence appropriate under the Water Quality Act,” in accordance with the Water Quality Act, NMSA 1978, §§ 74-6-1 to -17, and the Standards for Interstate and Intrastate Surface Waters, 20.6.4 NMAC.

2. Adoption of amendments to the State’s surface water quality standards must comply with the substantive and procedural requirements of NMSA 1978, § 74-6-6, and with the procedural requirements of 20.1.6 NMAC for rulemaking hearings before the Commission.

3. 20.6.4.9(A) NMAC sets forth the Commission’s procedures for nominating a surface water of the State for designation as an Outstanding Natural Resource Water (ONRW) and provides the following:

Any person may nominate a surface water of the state for designation as an ONRW by filing a petition with the commission pursuant to 20.1.6 NMAC, Rulemaking Procedures - Water Quality Control Commission. A petition to designate a surface water of the state as an ONRW shall include:

(1) a map of the surface water of the state, including the location and proposed upstream and downstream boundaries;

(2) a written statement and evidence based on scientific principles in support of the nomination, including specific reference to one or more of the applicable ONRW criteria listed in Subsection B of this section;

(3) water quality data including chemical, physical or biological parameters, if available, to establish a baseline condition for the proposed ONRW;

(4) a discussion of activities that might contribute to the reduction of water quality in the proposed ONRW;

(5) any additional evidence to substantiate such a designation, including a discussion of the economic impact of the designation on the local and regional economy within the state of New Mexico and the benefit to the state; and

(6) affidavit of publication of notice of the petition in a newspaper of general circulation in the affected counties and in a newspaper of general statewide circulation.

4. 20.6.4.9(B) and (C) set forth the Commission's criteria for ONRWs, which

includes:

B. A surface water of the state, or a portion of a surface water of the state, may be designated as an ONRW where the commission determines that the designation is beneficial to the state of New Mexico, and:

(1) the water is a significant attribute of a state special trout water, national or state park, national or state monument, national or state wildlife refuge or designated wilderness area, or is part of a designated wild river under the federal Wild and Scenic Rivers Act; or

(2) the water has exceptional recreational or ecological significance; or

(3) the existing water quality is equal to or better than the numeric criteria for protection of aquatic life and contact uses and the human health-organism only criteria, and the water has not been significantly modified by human activities in a manner that substantially detracts from its value as a natural resource.

C. Pursuant to a petition filed under Subsection A of this section, the commission may classify a surface water of the state or a portion of a surface water of the state as an ONRW if the criteria set out in Subsection B of this section are met.

5. The Commission's Antidegradation Policy at 20.6.4.8(A) NMAC includes the

following regarding ONRWs:

(3) No degradation shall be allowed in waters designated by the commission as outstanding national resource waters (ONRWs), except as provided in Subparagraphs (a) through (e) of this paragraph and in Paragraph (4) of this Subsection A.

(a) After providing a minimum 30-day public review and comment period, the commission determines that allowing temporary and short-term degradation of water quality is necessary to accommodate public health or

safety activities in the area in which the ONRW is located. Examples of public health or safety activities include but are not limited to replacement or repair of a water or sewer pipeline or a roadway bridge. In making its decision, the commission shall consider whether the activity will interfere with activities implemented to restore or maintain the chemical, physical or biological integrity of the water. In approving the activity, the commission shall require that:

(i) the degradation shall be limited to the shortest possible time and shall not exceed six months;

(ii) the degradation shall be minimized and controlled by best management practices or in accordance with permit requirements as appropriate; all practical means of minimizing the duration, magnitude, frequency and cumulative effects of such degradation shall be utilized;

(iii) the degradation shall not result in water quality lower than necessary to protect any existing use in the ONRW; and

(iv) the degradation shall not alter the essential character or special use that makes the water an ONRW.

(b) Prior to the commission making a determination, the department or appropriate oversight agency shall provide a written recommendation to the commission. If the commission approves the activity, the department or appropriate oversight agency shall oversee implementation of the activity.

(c) Where an emergency response action that may result in temporary and short-term degradation to an ONRW is necessary to mitigate an immediate threat to public health or safety, the emergency response action may proceed prior to providing notification required by Subparagraph (a) of this paragraph in accordance with the following:

(i) only actions that mitigate an immediate threat to public health or safety may be undertaken pursuant to this provision; non-emergency portions of the action shall comply with the requirements of Subparagraph (a) of this paragraph;

(ii) the discharger shall make best efforts to comply with requirements (i) through (iv) of Subparagraph (a) of this paragraph;

(iii) the discharger shall notify the department of the emergency response action in writing within seven days of initiation of the action;

(iv) within 30 days of initiation of the emergency response action, the discharger shall provide a summary of the action taken, including all actions taken to comply with requirements (i) through (iv) of Subparagraph (a) of this paragraph.

(d) Preexisting land-use activities, including grazing, allowed by federal or state law prior to designation as an ONRW, and controlled by best management practices (BMPs), shall be allowed to continue so long as there are no new or increased discharges resulting from the activity after designation of the ONRW.

(e) Acequia operation, maintenance, and repairs are not subject to new requirements because of ONRW designation. However, the use of BMPs to minimize or eliminate the introduction of pollutants into receiving waters is strongly encouraged.

(4) This antidegradation policy does not prohibit activities that may result in degradation in surface waters of the state when such activities will result in restoration or maintenance of the chemical, physical or biological integrity of the water.

(a) For ONRWs, the department or appropriate oversight agency shall review on a case-by-case basis discharges that may result in degradation from restoration or maintenance activities, and may approve such activities in accordance with the following:

(i) the degradation shall be limited to the shortest possible time;

(ii) the degradation shall be minimized and controlled by best management practices or in accordance with permit requirements as appropriate, and all practical means of minimizing the duration, magnitude, frequency and cumulative effects of such degradation shall be utilized;

(iii) the degradation shall not result in water quality lower than necessary to protect any existing use of the surface water; and

(iv) the degradation shall not alter the essential character or special use that makes the water an ONRW.

II. Petition to Nominate Surface Waters Designated as Special Trout Waters, or Wild and Scenic Rivers, or Located Within A Wilderness, Park, Monument or Refuge as Outstanding National Resource Waters

6. The Petition was filed before the Commission for consideration during its regularly scheduled meeting on September 10, 2024, requesting that the Commission determine that a public hearing should be held on the Petition in December 2024 in accordance with 20.1.6.200(C) NMAC.

7. Through Petitioner's petition, nominations, presentation, and testimony during a public hearing, the Commission will find that the Petition met all procedural requirements under 20.6.4.9(A) NMAC.

8. Through the Petitioner's petition, nominations, presentation, testimony and admitted exhibits during a public hearing, the Commission will find that designation of all the nominated surface waters is beneficial to the state, as required by 20.6.4.9(B) NMAC, and that each of those waters meet the criteria as a significant attribute of a state special trout water, national or state park, national or state monument, national or state wildlife refuge or designated wilderness area, or is part of a designated wild river under the federal Wild and Scenic Rivers Act, pursuant to 20.6.4.9(B)(1) NMAC.

A. ONRW Nominations Meet Procedural Requirements of 20.6.4.9(A) NMAC

9. The Petitioners have met all procedural requirements of 20.6.4.9(A) NMAC for nominating the ONRWs.

10. Petitioners provided a map of the [nominated] surface waters of the State, including the locations and proposed upstream and downstream boundaries for each nominated ONRW, in accordance with 20.6.4.9(A)(1) NMAC.

11. Petitioners provided a written statement and evidence based on scientific principles in support of the ONRW nominations, including specific reference to one or more of the applicable ONRW criteria, in accordance with 20.6.4.9(A)(2) NMAC.

12. Petitioners provided water quality data, including chemical, physical or biological parameters, if available, to establish a baseline condition for the proposed ONRW, in accordance with 20.6.4.9(A)(3) NMAC.

13. Petitioners provided a discussion of activities that might contribute to the reduction of water quality in the proposed ONRW, in accordance with 20.6.4.9(A)(4) NMAC.

14. Petitioners provided additional evidence to substantiate the designation, including a discussion of the economic impact of the designation on the local and regional economy within the state of New Mexico and the benefit to the state, in accordance with 20.6.4.9(A)(5) NMAC.

15. Petitioners provided an affidavit of publications of notice of the petition in a newspaper of general circulation in the affected counties and in a newspaper of general statewide circulation, in accordance with 20.6.4.9(A)(6) NMAC.

B. ONRW Nominations Meet Designation Requirements of 20.6.4.9(B) NMAC

16. The Commission will find that the designation of all the nominated waters as ONRWs would be beneficial to the State, as required by 20.6.4.9(B) NMAC.

17. Each of the nominated stream segments meet the criteria in 20.6.4.9(B)(1) NMAC as a significant attribute of a state special trout water, national or state park, national or state monument, national or state wildlife refuge or designated wilderness area, or are part of a designated wild river under the federal Wild and Scenic Rivers Act.

18. ONRW designation for the nominated stream segments would benefit the State of New Mexico because enhanced water quality protection will maintain and support (1) a clean water supply for present and future generations of New Mexicans, (2) healthy, functioning ecosystems, preserve habitat, and support biodiversity, (3) the recreational benefits in these areas, and (4) the designated uses of the waters under 20.6.4 NMAC.