

STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION

IN THE MATTER OF FINAL TOTAL
MAXIMUM DAILY LOAD FOR THE
UPPER RIO GRANDE WATERSHED,

No. WQCC 22-33
(WQCC 24-75)

NEW MEXICO ENVIRONMENT DEPARTMENT,
SURFACE WATER QUALITY BUREAU,

Petitioner.

ORDER

THIS MATTER came before the New Mexico Water Quality Control Commission (Commission) for approval at its regularly scheduled public meeting on January 13, 2025, on the *First Amended Petition for Approval of the Total Maximum Daily Load for the Upper Rio Grande Watershed* (Petition) of the Surface Water Quality Bureau (Bureau) of the New Mexico Environment Department (Department) filed on January 3, 2025. Christal Weatherly appeared at the public meeting as legal counsel for the Department.

The Commission, after due consideration of the proposed Final Total Maximum Daily Load (TMDL) for the Upper Rio Grande Watershed and being otherwise duly advised in the premises, finds:

1. TMDLs are defined under federal regulation as the sum of individual Waste Load Allocations for point sources, Load Allocations for nonpoint source and background conditions, and a Margin of Safety in acknowledgement of various sources of uncertainty in the analysis.
2. Section 303(d) of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. §§ 1251 et seq., requires states to develop TMDLs for each impaired waterbody and the pollutant for which that waterbody is impaired. 33 U.S.C. § 1313(d).

3. A TMDL is “a type of planning document rather than a rule or regulation under the [New Mexico Water Quality Act].” N.M. Env’t Dep’t v. Water Quality Control Comm’n, A-1-CA-40799, mem. op, ¶11 (N.M. Ct. App. May 22, 2024); See also NMSA 1978, §§ 74-4H-3(G) and 74-4H-3(F).

4. The Commission is “the state water pollution control agency for this state for all purposes of the federal [Clean Water Act].” NMSA 1978, § 74-6-3(E). “‘State water pollution control agency’ means the State agency designated by the Governor having responsibility for enforcing State laws relating to the abatement of pollution.” 33 U.S.C. § 1362(1). The Commission is not required by the federal Clean Water Act or the NM Water Quality Act to approve TMDLs.

5. The federal Clean Water Act and the NM Water Quality Act require the state to develop a WQMP-CPP and for the Commission to adopt that WQMP-CPP, which is subsequently approved by the Environmental Protection Agency (EPA) and contains EPA-approved TMDLs. 33 U.S.C. § 1288; 33 U.S.C. § 1313(e); 40 C.F.R. § 130.6(b); NMSA 1978, § 74-6-4(B).

6. The process for developing TMDLs is specified in Section IV of the WQMP-CPP, as approved by the Commission on September 21, 2020, pursuant to NMSA 1978, § 74-6-4(B) and available at <https://www.env.nm.gov/surface-water-quality/wqmp-cpp/>. 40 C.F.R. § 130.5(b)(3).

7. Section IV of the WQMP-CPP requires that the final draft TMDL be presented at a WQCC meeting for approval, and that WQCC comments be incorporated into the TMDL as necessary.

8. Section 303(d)(2) of the Clean Water Act requires states to submit the TMDLs to the EPA for approval. 33 U.S.C. § 1313(d)(2). Once approved by EPA, TMDLs become components of a state’s WQMP-CPP. 40 C.F.R. § 130.6(c)(1).

9. The Bureau correctly followed the TMDL development process for the Upper Rio Grande Watershed as specified in Section IV of the WQMP-CPP, and correctly calculated the TMDL for the Upper Rio Grande Watershed under applicable federal law and regulation.

10. The Bureau will include a new map as Appendix E to the Final Draft URG TMDL that reflects the location of the Outstanding National Resource Waters approved by the Commission during the public hearing held before the Commission on December 10, 2024.

IT IS THEREFORE ORDERED:

The *September 29, 2022, Final Draft Total Maximum Daily Loads for the Upper Rio Grande Watershed* with the addition of *Appendix E* is approved for submittal to EPA for final approval under 33 U.S.C. § 1313(d)(2) and incorporation into the NM State WQMP-CPP.

Dated this 14th day of January 2025.



Bruce Thomson, Chair
Water Quality Control Commission