

Instructions for completing the NMAC TRANSMITTAL FORM



Your agency must complete the following:

Volume, Issue and Publication Date. [Example: Volume: XXXII , Issue: 10, Publication date: May 25, 2021.](#)

Provide the total number of pages of the paper version of the new rule, amendment, repeal, or emergency document.
[Note: Do not include the pages of the transmittal form, billing sheet, PO, etc.](#)

Sequence number is for **ALD use only**.

Issuing agency's name and mailing address.

Agency's 3-digit DFA code. [Example: 123](#)

Contact person's Name, Phone number, E-mail address.

Check type of rule action: **New** (brand new rule or replacement rule), **Amendment**, **Repeal** (repeal and do not replace or repeal and replace), **Emergency**, or **Renumber**. [For a repeal and replacement rule, the agency must provide TWO signed transmittal forms; one for the repeal statement and another for the new \(replacement\) rule.](#)

Most Recent Filing Date of the Part for **ALD use only**.

Identify NMAC Title, Chapter and Part numbers and Title, Chapter and Part names.

[Example:](#)

Title 19 Natural Resources and Wildlife
Chapter 30 Wildlife Administration Aquatic
Part 14 Invasive Species

Description of Amendment: (if amending) [Example: "Amending three sections "](#)

Amendment's NMAC citation: (if amending) [Example: "Sections 9, 10 and 18 of 7.1.13 NMAC".](#)

Are any materials incorporated by reference? [Check: Yes or No. If Yes, please list attachments or provide Internet site.](#)

If incorporated, has copyright permission been granted? [Check Yes or No or check if document is in the public domain.](#)

Concise Explanatory Statement for rulemaking adoption See 1.24.25.14 NMAC:

Provide your agency's specific statutory or other authority authorizing rulemaking: Check with your agency's general counsel office to determine the correct citation(s) authorizing your agency to make rules.

Provide your Notice date(s) ([when notice of rulemaking was published in Register](#)): Hearing date(s) (if agency has board or commission): Rule adoption date: ([see note below](#)) and Rule effective date ([date rulemaking becomes effective](#))

Note:

- There must be at least **30** days between the notice publication date and hearing date.
- Your agency **must file** your rule within **15** days from rule adoption date. The date of adoption of the proposed rule shall be the date the concise explanatory statement is signed by the agency, unless otherwise specified in the concise explanatory statement. Unless your rule is an emergency filing, the rule effective date cannot be any earlier than the publication date in the New Mexico Register.

Findings required for rulemaking adoption. If attaching a separate document as findings or as concise explanatory statement, please indicate as such in findings section.

[Check with your agency's general counsel office regarding substance of any required findings to be filed.](#)

Issuing Authority: Name, Title Date signed and original Signature of issuing authority or their delegate in **black** ink or with valid digital signature: [Note: If authority has been delegated, this box must be checked. A letter of delegation must be on file with the State Records Center and Archives, Administrative Law Division.](#)

NMAC**Transmittal Form**

Volume: Issue: Publication date: Number of pages: (ALD Use Only) Sequence No.

Issuing agency name and address:

Agency DFA code:

Contact person's name:

Phone number:

E-mail address:

Type of rule action:

(ALD Use) Recent filing date:

New ☐ Amendment ☒ Repeal ☐ Emergency ☐ Renumber ☐

Title number:

Title name:

Chapter number:

Chapter name:

Part number:

Part name:

Amendment description (If filing an amendment):

Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference?

Please list attachments or Internet sites if applicable.

Yes ☐ No ☒

If materials are attached, has copyright permission been received?

Yes

No

Public domain

☐☐☐**Specific statutory or other authority authorizing rulemaking:**

Subsection D of Section 74-6-4 NMSA 1978;
Section 74-6-6 NMSA 1978; and
20.6.4.9 NMAC.

Notice date(s):

Hearing date(s):

Rule adoption date:

Rule effective date:

Concise Explanatory Statement For Rulemaking Adoption:

Findings required for rulemaking adoption:

Findings **MUST** include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

See attached Statement of Reasons and Concise Explanatory Statement.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

Bruce Thomson

Check if authority has been delegated

☐

Title:

Water Quality Control Commission Chair

Signature: (BLACK ink only OR Digital Signature)

Date signed: 1/28/2025

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**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
WATER PROTECTION DIVISION,**

Petitioner.

**WATER QUALITY CONTROL COMMISSION’S STATEMENT OF REASONS AND
CONCISE EXPLANATORY STATEMENT FOR ADOPTION OF
AMENDMENTS TO 20.6.4 NMAC**

The New Mexico Environment Department (NMED) hereby provides the following Statement of Reasons and Concise Explanatory Statement, which meets the requirements for a Statement of Reasons pursuant to 20.1.6.100.B(7) NMAC and the Concise Explanatory Statement pursuant to 1.24.25.14 NMAC.

I. Jurisdictional Authority and Statutory and Regulatory Requirements

1. The Water Quality Control Commission (Commission) is authorized by NMSA 1978, Section 74-6-4(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 Section 74-6-6 of the Water Quality

Act and with the procedural requirements of 20.1.6 NMAC for rulemakings 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 National 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) NMAC set forth the Commission's criteria for ONRWs, which include:

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.

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 requirements regarding ONRWs:

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. NMED filed the Petition for Rulemaking and Proposed Statement of Reasons (Petition) for the Commission's 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 of 2024, in accordance with 20.1.6.200(C) NMAC.

7. Included with the Petition was the 2024 ONRW Designation Nominations, which included the reasons for proposing the nominations and adopting the rule. **NMED Exhibit 4.**

A. 2024 ONRW Designation Nominations Met the Procedural Requirements of 20.6.4.9(A) NMAC

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

9. 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. **NMED Exhibit 4, p.3.**

10. 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. **NMED Exhibit 4, p.6.**

11. 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. **NMED Exhibit 4, p.7.**

12. 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. **NMED Exhibit 4, p. 10.**

13. 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. **NMED Exhibit 4, p. 13.**

14. 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. **NMED Exhibit 4, p. 14.**

III. Notice of Public Hearing and Stakeholder Engagement

15. On September 23, 2024, the Commission set a public hearing for December 10, 2024, to consider the Petition, in accordance with 20.1.6.200 NMAC. **9-23-24 Order; 10-15-24 Order.**

16. Notice of the public hearing was provided in accordance with the State Rules Act, NMSA 1978, §§ 14-4-1 to -11, and with the Commission’s rulemaking procedures at 20.1.6.201(A) NMAC. **NMED Exhibit 13.**

17. The public notice for the hearing was published by the Department in the *Albuquerque Journal*, *Santa Fe New Mexican*, and the *New Mexico Register* on October 8, 2024. **NMED Exhibit 13.**

18. The Department completed the “provide to the public” notice requirements outlined in 20.1.6.7(P) NMAC on or before October 9, 2024. **NMED Exhibits 13 and 14.**

19. The State of New Mexico recognizes the importance of communication and collaboration with tribes to ensure water quality across boundaries. The State has memorialized this sentiment through the State-Tribal Collaboration Act, NMSA 1978, Section 11-18-3, Executive Order 2005-004, and the Department’s Tribal Communication and Collaboration Policy. The Department provided notice of the hearing to tribal representatives, through the Department’s Tribal Liaison, on October 7, 2024. **NMED Exhibit 15.**

20. The Department notified potentially affected federal and state agencies of the nomination and rulemaking hearing via email. **NMED Exhibit 15.** The Department attached the public notices and nomination to each email, provided links to additional information, and invited questions, concerns, and requests for further engagement. The New Mexico Department of Game and Fish (NMDGC) is the only agency that provided feedback and comments. **NMED Exhibit 1, p.18; NMED Exhibit 4, p.82.** NMDGF provided a comment letter via email on the public review draft list of waters as provided in Appendix E4 of the nomination. **NMED Exhibit 4.** NMED and NMDGF met before and after their submittal, to discuss concerns and specific requests to remove waters. As a result, NMED reevaluated STW nominations and retained those that are headwater

streams, those that meet additional 20.6.4.9.B(1) NMAC criteria, and those that had public comment in specific support of the water. This resulted in the removal of three reaches in the final demonstration -- two on the Rio Chama immediately downstream of El Vado and Abiquiu Dams, and one on the Red River. **NMED Exhibit 1, pp. 18-19.**

21. The Department provided notice of the proposed amendments to the Small Business Regulatory Advisory Commission on October 8, 2024, in accordance with Section 14-4A-4 of the Small Business Regulatory Relief Act. **NMED Exhibit 16.**

22. At the request of the East Jemez Resource Council the Department provided a presentation on the nomination and proposed amendments at their Fall meeting in Los Alamos on October 29, 2024. **NMED Exhibit 17.**

IV. Public Hearing

23. A public hearing was held before the Commission on December 10, 2024.

24. Technical testimony for the Department was provided by Michael Baca, Water Quality Standards Coordinator for the Surface Water Quality Bureau. **NMED Exhibits 1-2.**

25. Technical testimony for Amigos Bravos and Trout Unlimited was provided by Dan Roper, Trout Unlimited New Mexico Program Lead. **AB-TU Exhibits 1-2.**

26. Shelly Lemon, Surface Water Quality Bureau Chief, provided rebuttal testimony and answers to technical questions beyond the expertise of Mr. Baca.

27. Lynette Guevara, Program Manager for the Monitoring, Assessment, and Standards Section of the Surface Water Quality Bureau, provided rebuttal testimony and answers to technical questions beyond the expertise of Mr. Baca.

28. Public comment, primarily in support of the ONRW designations, was provided in person and via the WebEx platform.

29. Mayor Telesfor “Ted” A. Benavidez of the Village of Pecos provided public comment with concern for the potential impact the ONRW designation of the Pecos river at 20.6.4.9(D)(8)(d) NMAC would have on any future expansion of the Village’s wastewater treatment facility and a request for further consultations with NMED. After consultation with NMED and testimony from Shelly Lemon that addressed the Mayor’s concerns, the Mayor changed his comment to one of support.

V. Reason for Change Between the Published Proposed Rule and the Final Rule

30. In response to comments from Commissioner Patten, NMED agreed to amend 20.6.4.9.D(8)(e) NMAC to read as follows: “Rio Cebolla from Seven Springs day use area upstream to its headwaters.”

VI. Reasons for Adopting the Final Rule

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

32. The Commission finds that 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.

33. The Commission finds that the ONRW designation for the nominated stream segments will 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.

VII. Date of Adoption

34. The date of adoption of the rule shall be the date of signature of the Commission Chair below.

ORDER and EFFECTIVE DATE

Through the Petitioner's Petition, nominations, presentation, and the testimonies and admitted exhibits from the Petitioner, Trout Unlimited, and Amigos Bravos during the public hearing, as well as public comment received on this matter, the Commission finds 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.

For the reasons stated above and by a unanimous vote of a quorum of the Commissioners, the Commission hereby approves and adopts the Department's Proposed Final Rule with any non-substantive amendments necessary for filing with the State Records Center, to be effective on

March 15, 2025, in accordance with applicable State Records Center procedures.

Signed by:

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1/28/2025

 Bruce Thomson, Chair
 Water Quality Control Commission

 Date