

HEARING RE MATTER OF PETITION TO NOMINATE SURFACE WATERS DESIGNATED AS SPECIAL

Deposition of: Transcript

Taken on: December 10, 2024



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Santa Fe, NM 87505

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STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION

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

**CERTIFIED
TRANSCRIPT**

HEARING RE THE MATTER OF THE 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 (ONRW).

BEFORE THE HONORABLE:

FELICIA L. ORTH

TUESDAY, DECEMBER 10, 2024

9:33 A.M.

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Santa Fe, New Mexico

December 10, 2024

9:33 a.m.

HEARING OFFICER ORTH: Thank you,
Mr. Chair.

My name is Felicia Orth, the
Hearing Officer appointed by the Commission
to conduct a hearing in the matter, docketed
as WQCC 24-46.

This hearing is an ONRW hearing,
or for Outstanding National Resource Waters,
a designation reserved for the most
extraordinary and pristine stretches of
streams around the State.

We have the Petitioner, which is
New Mexico Environment Department Surface
Water Bureau. We also have Amigos Bravos,
and I'll ask you actually for appearances.

We have Mr. Maxwell, or I believe
I see Mr. Maxwell on the platform.

There he is.

These were the folks who entered
appearances, and we'll hear statements from
them.



1 There are 2 witnesses noticed up.
2 Mr. Baca, on behalf of the Department, and
3 Mr. Roper on behalf of Amigos Bravos and
4 Trout Unlimited.

5 Apart from statements by the
6 parties, I will also invite Non-Technical
7 Public Comment when we have completed the
8 technical party statements.

9 There's one wrinkle there:

10 I had, in a Prehearing Order,
11 noted that we would break into the technical
12 case as necessary to take Public Comment at
13 1:00 p.m. today, and at 5:00 p.m. today, and
14 if necessary at 9:00 and 1:00 tomorrow. I
15 don't believe any of that is going to be
16 necessary.

17 We had one person reach out to
18 offer or reserve a spot at the 5:00 o'clock
19 Public Comment window this afternoon. Pam is
20 in touch with her to say we will take her
21 Public Comment earlier. I do not believe
22 we're going to make it to the end of the day
23 because the parties are, so far as I can
24 tell, generally supportive and there isn't a
25 lot of opposition here. There may be some,

1 but it did not turn out to be a contentious
2 matter.

3 If any party or anyone in this
4 room, or on the platform, is aware that
5 someone would like to offer Public Comment,
6 I'm going to be asking for that as soon as I
7 can, and not waiting until 1:00 and 5:00.

8 Let's have appearances first.

9 Mr. Weatherly.

10 MS. WEATHERLY: Good morning, Madam
11 Hearing Officer, Chair Thomson, and members
12 of the Commission. Christal Weatherly for
13 the New Mexico Environment Department.

14 HEARING OFFICER ORTH: Thank you.

15 Ms. Fox.

16 MS. FOX: Good morning, Madam Hearing
17 Officer, Chair Thomson, members of the
18 Commission. My name is Tannis Fox. I'm a
19 lawyer with the Western Environmental Law
20 Center, and I'm here today representing
21 Amigos Bravos and Trout Unlimited.

22 HEARING OFFICER ORTH: Thank you.

23 And Mr. Maxwell on the platform.

24 MR. MAXWELL: Good morning, everybody.
25 My name is Nicholas Ray Maxwell. I'm one of

1 the people in Southwest New Mexico, in Lea
2 County. Thank you for having the public
3 today.

4 HEARING OFFICER ORTH: Thank you,
5 Mr. Maxwell.

6 The hearing will be conducted
7 under the Water Quality Act and the
8 Commission's Rulemaking procedures, or 20.1.6
9 of the New Mexico Administrative Code.

10 Testimony is taken under oath and
11 subject to Cross-Examination.

12 Let's start with Opening
13 Statements.

14 Ms. Weatherly.

15 MS. WEATHERLY: Good morning again.
16 Christal Weatherly again, here for the New
17 Mexico Environment Department.

18 It is a privilege to be here today
19 to represent the Surface Water Quality Bureau
20 of the Water Protection Division of the New
21 Mexico Environment Department.

22 With me today to present technical
23 testimony on behalf of the Department is
24 Michael Baca. Mr. Baca is the Water Quality
25 Standards Coordinator for the Surface Water

1 Quality Bureau.

2 Also with me today from the
3 Department are Shelly Lemon, Surface Water
4 Quality Bureau Chief, and Lynette Guevara,
5 Program Manager for the Monitoring,
6 Assessment, and Standards section of the
7 Surface Water Quality Bureau.

8 Ms. Lemon and Ms. Guevara are not
9 here to present technical testimony, but are
10 here today to assist in answering any
11 questions that may go beyond the expertise of
12 Mr. Baca, or as Rebuttal witnesses if
13 necessary, though not expected.

14 The Department is before you today
15 to present technical Testimony in Support of
16 bestowing the highest protection of Water
17 Quality under the State's Antidegradation
18 Policy for Surface Waters that are Designated
19 at Special Trout Waters, or Wild and Scenic
20 Rivers, or located within a Wilderness, Park,
21 Monument or Refuge.

22 As articulated in the Nomination,
23 which is included as NMED Exhibit 4, this
24 proposed rule is the culmination of hard work
25 by the Department, and years of collaboration

1 with third parties to identify and Nominate
2 stream segments that meet ONRW Eligibility
3 Requirements under 20.6.4.9 NMAC.

4 The Water Quality Control
5 Commission is authorized under the New Mexico
6 Water Quality Act to adopt and amend Water
7 Quality Standards for Surface Waters of the
8 State based on credible scientific data and
9 other evidence.

10 The adoption of amendments to the
11 State's Water Quality Standards must comply
12 with the requirements of the Water Quality
13 Act, the State Rules Act, the Small Business
14 Regulatory Relief Act, and the Commission's
15 Rulemaking procedures.

16 As Mr. Baca will testify, the
17 Department has met all procedural
18 requirements for this Nomination, and comes
19 to you with extensive support in this effort
20 to protect these precious waters in our
21 State.

22 Lastly, on November 20 the
23 Department filed a Notice of Intent to
24 Present Technical Testimony, and included 19
25 exhibits. Prior to today's hearing I

1 conferred with Counsel for Amigos Bravos and
2 Trout Unlimited, and we mutually stipulate
3 for the entry of all NMED, Amigos Bravos, and
4 Trout Unlimited exhibits into the record.

5 As such I would like to take this
6 moment to move for the admission of all
7 exhibits by NMED and Amigos Bravos and Trout
8 Unlimited into the record.

9 HEARING OFFICER ORTH: Okay. Thank
10 you, Ms. Weatherly.

11 Did you also check with
12 Mr. Maxwell?

13 MS. WEATHERLY: I did not.

14 HEARING OFFICER ORTH: All right.

15 Mr. Maxwell, do you have any
16 objection to the admission of Exhibits 1
17 through 19?

18 MR. MAXWELL: I do. I would like to
19 hear the testimony and have a foundation laid
20 first.

21 HEARING OFFICER ORTH: Mr. Baca's
22 testimony.

23 MR. MAXWELL: Yes.

24 HEARING OFFICER ORTH: All right.

25 Do you have objection to the other

1 exhibits?

2 MR. MAXWELL: As well for the other
3 witness that will be testifying, I do.

4 HEARING OFFICER ORTH: So the other
5 witnesses are not expected to testify.

6 Ms. Lemon and Ms. Guevara, unless they are
7 required to offer Rebuttal.

8 MR. MAXWELL: Okay. That's my
9 misunderstanding. I thought you were also
10 referring to the other party, too.

11 HEARING OFFICER ORTH: No, I wasn't.

12 MR. MAXWELL: Okay.

13 HEARING OFFICER ORTH: No, because it
14 hasn't been offered yet; right?

15 Yeah, no, we're just talking about
16 NMED's Exhibits 1 through 19.

17 Mr. Baca's testimony is Exhibit 1.
18 We can certainly wait until he's under oath
19 to admit that.

20 Can I get the others without your
21 objection?

22 MR. MAXWELL: I'll withhold my
23 objection on the others.

24 HEARING OFFICER ORTH: All right.
25 Thank you.

1 NMED Exhibits 2 through 19 are
2 admitted and we'll wait until Mr. Baca is
3 under oath to get Exhibit 1 in.

4 (NMED Exhibit 2 was marked for
5 identification.)

6 (NMED Exhibit 3 was marked for
7 identification.)

8 (NMED Exhibit 4 was marked for
9 identification.)

10 (NMED Exhibit 5 was marked for
11 identification.)

12 (NMED Exhibit 6 was marked for
13 identification.)

14 (NMED Exhibit 7 was marked for
15 identification.)

16 (NMED Exhibit 8 was marked for
17 identification.)

18 (NMED Exhibit 9 was marked for
19 identification.)

20 (NMED Exhibit 10 was marked for
21 identification.)

22 (NMED Exhibit 11 was marked for
23 identification.)

24 (NMED Exhibit 12 was marked for
25 identification.)



1 (NMED Exhibit 13 was marked for
2 identification.)

3 (NMED Exhibit 14 was marked for
4 identification.)

5 (NMED Exhibit 15 was marked for
6 identification.)

7 (NMED Exhibit 16 was marked for
8 identification.)

9 (NMED Exhibit 17 was marked for
10 identification.)

11 (NMED Exhibit 18 was marked for
12 identification.)

13 (NMED Exhibit 19 was marked for
14 identification.)

15 MS. WEATHERLY: Thank you, Madam
16 Hearing Officer.

17 HEARING OFFICER ORTH: All right.
18 Is that the end of your Opening
19 Statement?

20 MS. WEATHERLY: That is the end of my
21 Opening Statement. Thank you.

22 HEARING OFFICER ORTH: All right.
23 Thank you.

24 Would you like to reserve,
25 Ms. Fox, or go now?

1 MS. FOX: Now.

2 HEARING OFFICER ORTH: All right.

3 MS. FOX: I have a very brief Opening,
4 Commissioners. Good morning again, Madam
5 Hearing Officer and Commissioners. I'm
6 Tannis Fox with THE Western Environmental Law
7 Center. I represent Amigos Bravos and Trout
8 Unlimited in this proceeding.

9 Amigos Bravos is a nonprofit water
10 conservation organization dedicated to
11 protecting and restoring the waters of New
12 Mexico. Amigos Bravos has participated in
13 each of the 5 ONRW Petitions that have come
14 before this Commission, including having
15 petitioned the Commission to designate the
16 State's very first ONRW, the Rio Santa
17 Barbara.

18 Trout Unlimited is a national
19 nonprofit organization dedicated to caring
20 for and recovering rivers and streams to
21 protect wild and native trout.

22 This is only the sixth ONRW
23 Petition that has come before the Commission
24 since the Commission first passed ONRW
25 regulations almost 20 years ago in 2005.

1 NMED's Petition nominates waters referred to
2 as Criteria 1 waters, identified in
3 20.6.4B(1) NMAC. These waters are eligible
4 for ONRW status by virtue of being located
5 within lands that already have a special
6 status, such as a National Park or Wildlife
7 Refuge, or by virtue of having special status
8 themselves, such as being Designated as a
9 Special Trout Water.

10 The Federal Clean Water Act
11 regulations at 40 C.F.R. 131.12(a)(3), which
12 are referenced in Mr. Baca's testimony,
13 recognize that waters such as these may well
14 constitute an Outstanding National Resource
15 that should be protected.

16 This Commission in 2005 adopted
17 the Federal approach and recognized that
18 these Criteria 1 waters are inherently High
19 Value waters.

20 Today you will hear testimony from
21 Dan Roper, New Mexico Program Lead for Trout
22 Unlimited. Amigos Bravos and Trout Unlimited
23 strongly support the entirety of NMED's
24 Petition, and we commend the Department's
25 hard work bringing this Petition before you.

1 Mr. Roper's written testimony
2 focuses on Nominated Waters that are
3 Designated as Special Trout Waters. As
4 Mr. Roper puts it:

5 "Trout Unlimited members'
6 knowledge of New Mexico trout
7 streams is unrivaled. There isn't
8 a trout stream in New Mexico their
9 members don't know."

10 Mr. Roper's testimony bring these
11 streams to life, whether he's talking about
12 our State's most popular fishing waters, like
13 the Rio Chama, the Pecos, the Guadalupe, or
14 the more remote tributaries like the San
15 Cristóbal or Columbine. Trout Unlimited's
16 members have a deep appreciation why each of
17 the special trout waters Nominated deserve
18 the highest Water Quality protection the
19 State can provide.

20 Indeed included in the Nominated
21 streams are a number that are home to New
22 Mexico's State Fish, the Rio Grande Cutthroat
23 Trout. This Fish's historic range is
24 severely reduced, and they depend on clean
25 water from Nominated streams like the Nabor,

1 Palociento, and Tanques, for its very
2 survival. At bottom, an ONRW Designation
3 compliments and enhances these Waters' status
4 as Special Trout Waters.

5 We very much appreciate the
6 Commission's time and attention today, and we
7 look forward to presenting our testimony.

8 HEARING OFFICER ORTH: Thank you,
9 Ms. Fox.

10 Mr. Maxwell, would you like to say
11 anything by way of an Opening?

12 MR. MAXWELL: Thank you. I do not.
13 I'm good.

14 HEARING OFFICER ORTH: All right.
15 Thank you.

16 Ms. Weatherly, if you would
17 introduce your first witness.

18 MS. WEATHERLY: Good morning.

19 With me today is Michael Baca.

20 HEARING OFFICER ORTH: Mr. Baca, do
21 you swear or affirm to tell the truth?

22 THE WITNESS: I do.

23 HEARING OFFICER ORTH: Thank you.

24 ///

25 ///



1 MR. MICHAEL BACA,
2 after having been first duly sworn,
3 was examined and testified as follows:
4

5 DIRECT EXAMINATION

6 BY MS. WEATHERLY:

7 Q. Can you please state your name and
8 occupation for the record.

9 A. My name is Michael Baca. I am the
10 Water Quality Standards Coordinator for the
11 New Mexico Environment Department Surface
12 Water Quality Bureau.

13 Q. How long have you been in that
14 position?

15 A. I have been in this position for about
16 a year, but I have been with the Department
17 coming on 20 years in February.

18 Q. And did you file a Resumé in this
19 matter as NMED Exhibit 2?

20 A. I did.

21 Q. And did you file written testimony in
22 this matter as NMED Exhibit 1?

23 A. I have.

24 Q. And do you adopt that written
25 testimony here today?

1 A. I do.

2 Q. Will you please provide a summary of
3 that written testimony, beginning with ONRW
4 Designations, and the State's Antidegradation
5 Policy.

6 A. Sure. Thank you.

7 Madam Hearing Officer, Chair
8 Thomson, and members of the WQCC:

9 The Department has Nominated River
10 and Stream Reaches as Outstanding National
11 Resource Waters. Or ONRWs, under New
12 Mexico's Standards for Interstate and
13 Intrastate Surface Waters codified at 20.6.4
14 NMAC, commonly referred to as "Water Quality
15 Standards." The proposed amendments follow
16 the provisions of Section 9 of the Standards,
17 allowing the Commission to designate waters
18 as ONRWs.

19 The Department limited the scope
20 of the Nominations to waters within an
21 existing Special Designation, such as Special
22 Trout Waters, Wild Rivers, or waters located
23 in a Wilderness Area, or in a National or
24 State Park, Monument, or Wildlife Refuge.
25 This criterion recognizes that these waters

1 are significant attributes of and inherently
2 embody the characteristics of ONRWs.

3 ONRWs possess exceptional
4 recreational or ecological significance, and
5 are afforded protections to maintain and
6 preserve their Water Quality. The Standards
7 require the Commission to determine that an
8 ONRW Designation is beneficial to the State,
9 and that the Nominated Water meets 1 or more
10 of the qualifying criteria outlined by
11 Section 9 of the Standards in order to adopt
12 the regulatory language to designate an ONRW.

13 Under New Mexico's Antidegradation
14 Policy, ONRWs are classified as Tier 3
15 Waters, where Water Quality cannot be lowered
16 or degraded. This is the highest level of
17 protection afforded under the Antidegradation
18 Policy.

19 The Statewide Antidegradation
20 Policy includes limited Exceptions for
21 temporary and short-term Degradation. For
22 the Exceptions to apply, the Commission has
23 to determine the activity or discharge is:

24 "1: Necessary to accommodate
25 public health or safety;

1 "2: Is in response to an
2 emergency action;

3 "3: Is a preexisting land use
4 activity controlled by BMPs;

5 "4: Is related to acequia
6 operation, maintenance, and
7 repair; and,

8 "5: Is the result of the
9 restoration or maintenance of the
10 chemical, physical, or biological
11 integrity of the water."

12 Future anthropogenic activities
13 and discharges are allowed, but these require
14 a demonstration that they will not cause
15 Degradation of the ONRW.

16 Likewise for Point Sources, the
17 Designation of an ONRW would not prohibit a
18 Permittee for applying for a new or increased
19 discharge to an ONRW. The applicant must
20 show that the discharge would not cause
21 Degradation of the Water Quality as
22 established in baseline conditions, or
23 established existing uses.

24 Q. Thank you.

25 Can you please provide a summary

1 of the ONRW Nomination and Petition
2 requirements.

3 A. Sure.

4 Madam Hearing Officer, Chair
5 Thomson, members of the Commission:

6 Under the Water Quality Act, the
7 Commission's Rulemaking rules at 20.1.6 NMAC,
8 and the Water Quality Standards, anyone may
9 Petition the Commission to Nominate a water
10 for ONRW Designation.

11 Like any other Standard or
12 Rulemaking adoption, ONRWs are Designated
13 through a public process that includes a
14 Public Comment period and a Public Hearing
15 before the Commission.

16 The criteria for ONRW Designation
17 in New Mexico are set forth in 20.6.4 NMAC.

18 Section 9 provides that:

19 "Surface Waters of the State
20 may be Designated as an ONRW where
21 the Commission determines that the
22 Designation is beneficial to the
23 State of New Mexico, and [meets 1
24 of the 3 criteria listed in
25 Subsection B]."

1 In previous Rulemakings the
2 Commission recognized the importance of water
3 to areas with existing State or Federal
4 Designations, making these eligible for ONRW
5 Designations. 20.6.4.9A NMAC lists the 6
6 elements that must be included in any
7 Petition to Nominate Waters as an ONRW. The
8 elements include:

9 Maps of the Nominated Surface
10 Waters;

11 2: Statements and evidence to
12 support the Nomination, and must include
13 existing Water Quality Data, if any;

14 A Nomination must include a
15 discussion of the activities that could
16 degrade the Water Quality;

17 We must include a discussion of
18 the benefit and economic impact of the
19 Designation;

20 And lastly, we must provide early
21 Public Notice of the Nomination and our
22 intent to designate a water as an ONRW.

23 In regard to the maps of the
24 Surface Waters of the State, NMED provided
25 Appendix A of the Nomination, which has the

1 Geographical-Information-System-based maps
2 that NMED developed for the Nominated Waters.
3 These maps provide the location and the
4 Upstream and Downstream Boundaries of the
5 Nominations.

6 The Surface Water Quality Bureau's
7 online mapper also provides the GIS mapping
8 layers for the Nominated Waters, and
9 previously Designated ONRWs.

10 In regard to "a written statement
11 and evidence based on scientific principles,"
12 in their Nomination the Department Nominated
13 46 waters totaling over 256 miles for
14 Designation. Of those, 36 met a single
15 Special Designation Criteria, with 3 as part
16 of a Designated Wild and Scenic River; the
17 Rio Chama and Red River;

18 5 within National Monuments; the
19 Bandelier and Rio Grande del Norte;

20 3 within the Valles Caldera
21 National Preserve;

22 1 within the Pecos National
23 Historic Park.

24 9 are within the Columbine-Hondo
25 Wilderness Area;

1 And 15 waters are designated as
2 Special Trout Waters.

3 Additionally, 10 Special Trout
4 Waters meet 1 additional Special Designation
5 Eligibility Criteria.

6 Of these, 1 is in Bandelier
7 National Monument;

8 2 are in Valles Caldera National
9 Preserve;

10 1 is in Cimarron Canyon State
11 Park; and,

12 6 are in the Columbine-Hondo
13 Wilderness Area.

14 Special Trout Waters make up the
15 largest category of Stream Reaches Nominated
16 for ONRW Designation with 25 waters. Special
17 Trout Waters are managed to achieve various
18 goals, including to produce trophy-sized
19 trout;

20 Improved conservation of native
21 trout; or,

22 Enhance the overall trout
23 population, structure, and density.

24 The second largest category of
25 Stream Reaches are those within Wilderness

1 Areas or Designated Wild Rivers, with 18
2 waters Nominated.

3 The Wild River Designation under
4 the Federal Wild and Scenic Rivers Act is
5 intended to protect the free-flowing
6 character of a river. The Statute lists
7 "recreational," "ecological," and other
8 similar values that are to be protected for
9 the benefit and enjoyment of present and
10 future generations.

11 Similarly, the Wilderness Act
12 lists:

13 "... ecological or other
14 features of scientific,
15 educational, scenic, or historical
16 value [as attributes of a
17 Wilderness Area]."

18 In New Mexico, many Wilderness
19 Areas are located in the remote, isolated,
20 and primitive areas where Headwater Streams
21 originate. Recognizing the importance of
22 these areas, "the protection of Watersheds"
23 was cited as one of the purposes for which
24 some of our Wilderness Areas were Designated.

25 Similarly, Parks, Monuments,

1 Refuges, and Preserves, are Designated by
2 legislative bodies because they possess
3 natural features and values that are
4 significant and beneficial on a local, State,
5 or national level.

6 Areas with existing Special
7 Designations are managed:

8 "... to protect preserve, or
9 restore its natural conditions,
10 including its Surface Waters, that
11 embody the recreational,
12 ecological, cultural, historical,
13 or other similar values that
14 should be preserved and protected
15 for future generations."

16 These waters are a significant
17 attribute because of the critical role they
18 play in overall Watershed health.

19 This is especially true in New
20 Mexico, an arid State where Surface Waters
21 are highly valued and often include the
22 Headwaters that feed Downstream water
23 supplies.

24 In addition to providing habitat
25 for numerous animals, these waters provide

1 riparian and wetland plant communities that
2 serve critical ecological functions.
3 Designation of the Nominated streams as ONRWs
4 will enhance protection of these ecological
5 attributes that support the varied
6 recreational activities enjoyed by many.

7 In addition to fresh water, the
8 Nominated streams provide New Mexicans
9 fishing opportunities;

10 Places of solitude and relaxation;
11 Unique habitats for plants and
12 animals; and,

13 Reference sites to compare against
14 impacted ecosystems.

15 These uses are sustainable, and
16 the protection of Water Quality will ensure
17 the long-term benefit of these waters to the
18 State.

19 In regards to Water Quality Data,
20 the Department provided available Water
21 Quality Data for the Nominated Waters to
22 establish baseline conditions and available
23 data.

24 Additionally, the Department
25 provided related Clean Water Act 303(d) and

1 305(b) Impairment Status in the Nomination.

2 NMED also included a discussion of activities
3 that might contribute to Water Quality
4 reduction within the Nomination.

5 Existing and potential activities
6 that could reduce Water Quality in the
7 Nominated Waters include, but are not limited
8 to:

9 Climate change;

10 Wildfires;

11 Dams;

12 Hard rock mining;

13 Illegal waste disposal; and,

14 Point Source discharges.

15 Four of the Nominated Waters have
16 existing Point Sources with individual
17 National Pollutant Discharge Elimination
18 System permits or NPDES permits:

19 4 permits are for fish hatcheries;

20 1 for a Wastewater Treatment
21 Plant; and,

22 1 for a Closed Mining Facility.

23 NMED also provided additional
24 evidence to substantiate the Designation
25 within a Nomination:

1 The proposed ONRW Designation is
2 not expected to have detrimental economic
3 impact on existing land use activities as
4 none of the requirements will apply.

5 Activities controlled by BMPs are
6 allowed to continue in a Designated ONRW
7 Watershed as long as no new Water Quality
8 Degradation occurs.

9 Petitioners do not propose to
10 alter the protection given to existing uses
11 under the current regulations, but propose to
12 maintain this protection.

13 For example, grazing conducted in
14 an ONRW Watershed, in accordance with a
15 permit issued by the United States Forest
16 Service, is considered a Preexisting Land Use
17 Activity that will be allowed to continue.

18 NMED developed the ONRW proposal
19 to Nominate streams in existing Special
20 Designations that are part of a larger
21 Recreational or Ecological Management System.

22 Areas with Special Designations
23 provide many important benefits and values to
24 New Mexico. The Nominated Waters are a
25 source of abundant clean water, essential for

1 the survival of plants, animals, and humans.
2 These areas provide important ecological
3 services, including Watershed Resilience for
4 wildfire and drought, carbon storage,
5 nutrient cycling, flood mitigation, fish and
6 wildlife habitat, and biodiversity.

7 These areas in the Nominated
8 Waters also provide important and diverse
9 recreational activities, and contribute to
10 scenic, spiritual, and cultural values of
11 these areas that are very special to many New
12 Mexicans.

13 Adequate flow and Water Quality
14 are essential to maintaining healthy
15 populations of aquatic life, including fish,
16 which, in turn, are sources of the many
17 economic, recreational, cultural, and
18 spiritual values.

19 Water is a critically important
20 resource to our State. As private lands
21 continue to be developed, public and other
22 protected lands will grow in importance as
23 sources of high quality water runoff.

24 Lastly, the Department must
25 provide an Affidavit of Publication of Notice

1 of the Petition and Public Comments within
2 the Nomination.

3 NMED published Notice of the
4 Petition in the Santa Fe New Mexican and the
5 Albuquerque Journal.

6 Additionally we sent the List
7 Serve e-mail to approximately 1,900
8 subscribers, and sent direct e-mails to
9 Federal, State, and Tribal Representatives
10 and other interested parties.

11 At the same time NMED engaged the
12 community and provided outreach and education
13 opportunities. This included a 30-day Public
14 Comment period, and a virtual Public Meeting
15 that provided a presentation of the current
16 Nomination and anticipated procedural steps
17 for Rulemaking.

18 During the Meeting, public
19 participation opportunities were highlighted,
20 and Staff provided a live demonstration of
21 how to navigate NMED's websites, find
22 information, and participate in the
23 Rulemaking process. A summary of the Public
24 Meeting was included in the Nomination.

25 NMED received significant interest

1 and support for the Nomination with over 700
2 people and organizations providing comment.
3 The majority of these comments, nearly 97%,
4 were supportive of the ONRW Nomination
5 without change.

6 The New Mexico Department of Game
7 and Fish provided a Comment Letter, and
8 worked with the Department to review and
9 revise the Nominated Waters. We met to
10 discuss concerns and specific requests to
11 remain Special Trout Waters.

12 After reevaluating the Special
13 Trout Water Nominations, we retained those
14 that are also Headwater Streams, those that
15 met additional 20.6.4.9B(1) NMAC criteria,
16 and those that have supported Public Comment.
17 In the end, NMED removed 3 Nomination; 2 on
18 the Rio Chama, and 1 on the Red River.

19 Q. Thank you, Mr. Baca.

20 Can you please summarize the
21 Department's compliance with Rulemaking
22 procedural requirements, Public Notice, and
23 stakeholder engagement for this matter.

24 A. Thank you. Sure.

25 Madam Hearing Officer, Chair

1 Thomson, esteemed members of the Commission:

2 If the Commission grants a Hearing
3 for a Petition for Rulemaking, the Petition
4 must provide to the public a Notice of
5 Rulemaking in accordance with the State Rules
6 Act, the Water Quality Act, the Water Quality
7 Standards, and the Commission's rules for
8 Rulemaking.

9 NMED complied with these
10 requirements by:

11 Providing Public Notice of
12 Rulemaking that included the subject;

13 A summary; and,

14 The purpose of the proposed Rule;

15 The legal authority for the Rule
16 and its adoption;

17 The technical basis for the
18 proposed rule; and,

19 Additionally the Public Notice
20 provided information regarding the governing
21 laws of procedure, how to find technical
22 information, and how to participate in the
23 hearing, examine documents, and download
24 information.

25 NMED provided the Public Notice

1 for the Rulemaking Hearing by publishing in
2 the Albuquerque Journal, Santa Fe New
3 Mexican, and the New Mexico Register.

4 Additionally the Department
5 assisted the Commission Administrator with
6 completing notification requirements and
7 providing Rulemaking information to the
8 public by posting it on the Commission and
9 Department's websites;

10 Posting it on the New Mexico
11 Sunshine Portal;

12 Making available at NMED's
13 District and Field Offices;

14 Sending it by e-mail to the
15 Surface Water Quality Bureau's main and NPDES
16 Permittee List Serves;

17 Sending it by e-mail to persons
18 who participated in the Rulemaking; and,

19 Providing it to the New Mexico
20 Legislative Council.

21 Additionally the Department
22 provided Notice of the Hearing to Tribal
23 Representatives;

24 Potentially affected Federal and
25 State agencies;

1 The Small Business Regulatory
2 Advisory Council; and,
3 The Regulated community regarding
4 the Nominations and Rulemaking hearing per
5 ONRW Designations.

6 NMED attached the Public Notices
7 and Nomination to each e-mail;

8 Provided links to additional
9 information; and,

10 Invited questions, concerns, and
11 requests for further engagement.

12 At the request of the East Jemez
13 Resource Council, the Department provided a
14 hybrid presentation, in person and online,
15 that was well-received with no negative
16 feedback or concerns raised.

17 Q. Thank you, Mr. Baca.

18 Is there anything else that you
19 would like to add?

20 A. Yes.

21 Madam Hearing Officer, Chair
22 Thomson, members of the Water Quality Control
23 Commission:

24 New Mexico's water and natural
25 resources are under enormous strain, and we

1 need a strategy to protect and maintain these
2 in a sustainable and beneficial way. ONRW
3 Designation provides the tools to protect and
4 improve Water Quality for the benefit of
5 present and future generations and wildlife.

6 The protection of these waters
7 will help maintain a clean water supply for
8 human use;

9 Agricultural use and wildlife
10 habitat within these areas;

11 As well as Downstream uses by
12 municipal water supply for domestic and
13 industrial use;

14 Domestic wells;

15 Agriculture;

16 Livestock watering; and,

17 Recreational interests.

18 The protection of these waters
19 will also help to maintain healthy
20 functioning ecosystems;

21 Preserve habitat;

22 Support biodiversity; and,

23 Protect endangered and threatened
24 species.

25 3: The protection of these waters

1 will help maintain the recreational benefits
2 in this areas; and,

3 The Designated uses of the waters
4 under the Commission's Water Quality
5 Standards at 20.6.4 NMAC.

6 Q. Thank you, Mr. Baca.

7 MS. WEATHERLY: On behalf of the
8 Department I would like to thank the Hearing
9 Officer, the Chair, and members of the
10 Commission for your time and attention, and
11 request that the Commission deliberate on the
12 proposed rule today.

13 Following today's hearing the
14 Department will file with the Commission a
15 revised and updated Proposed Statement of
16 Reasons, and concise explanatory statement,
17 along with the NMAC transmittal form that the
18 State Records Center and Archives requires.
19 Both of these documents will need the
20 signature of the Commission Chair.

21 Thank you very much.

22 HEARING OFFICER ORTH: Thank you,
23 Ms. Weatherly and Mr. Baca.

24 Is there any objection, at this
25 point, to admitting NMED Exhibit 1?

1 No.

2 All right. Thank you. Exhibit 1
3 is admitted.

4 (NMED Exhibit 1 was marked for
5 identification.)

6 Ms. Fox, do you have questions of
7 Mr. Baca?

8 MS. FOX: No, I don't. Thank you,
9 Madam Hearing Officer.

10 MS. WEATHERLY: Mr. Maxwell, do you
11 have questions of Mr. Baca?

12 MR. MAXWELL: I do.

13
14 CROSS-EXAMINATION

15 BY MR. MAXWELL:

16 Q. Hello, Mr. Baca. My name is Nicholas
17 Maxwell.

18 As I understand this is not the
19 first time the Department has Petitioned the
20 Commission for ONRW Designations; correct?

21 A. That is correct.

22 Q. And during this Petition approximately
23 245 miles of Surface Water is being proposed
24 for these Designations; correct?

25 A. Approximately, correct.

1 Q. Would you describe the protections
2 offered by the ONRW Designation as requiring
3 additional steps for Discharge Permittees to
4 obtain Discharge Permits?

5 A. No, I would not.

6 Q. You mentioned that a Wastewater
7 Treatment facility with an NPDES permit would
8 be impacted by this ONRW Designation. Is
9 that correct?

10 A. I mentioned that there was an NPDES
11 Permittee Upstream of the Nomination; I do
12 not think that I stated that would be
13 impacted.

14 Q. Did you mention anything about a
15 Wastewater Treatment facility today during
16 your testimony?

17 A. Yes, I did.

18 Q. All right. Could you remind us
19 specifically what that testimony was about.

20 A. It was discussion of activities that
21 might contribute to Water Quality reduction.

22 Q. Could you give me the name of that
23 facility and the County it's located in?

24 A. Yes. I believe that is within the
25 Nomination in Exhibit 4, Table 3 is it?

1 Within Table 3 of Exhibit 4 you
2 will find that the village of Pecos
3 Wastewater Treatment Plant is listed there as
4 1 of the Point Sources.

5 Q. Okay. And same 2 questions for the
6 Closed Mining facilities. Please give the
7 name of the facility and the County it's
8 located in.

9 A. That is also located in Table 3. That
10 says:

11 "Chevron Mining Inc., Questa
12 Mine."

13 That is on the Red River Wild and
14 Scenic Stretch.

15 That River also has another NPDES
16 permit listed there within that Table.

17 Q. Do I understand correctly that permit
18 is owned by Chevron or held by Chevron?

19 A. I'm not too sure who owns that, but
20 the name listed on that permit is:

21 "Chevron Mining, Inc."

22 Q. Do you know if the Department made any
23 attempt to provide that at this Public
24 Hearing to the Village of Pecos or this
25 entity that holds the permit?

1 A. Yes, we did.

2 Q. Are you aware of any of these ONRW
3 Designations being made in the Southeast New
4 Mexico region, specifically in Lea County,
5 Eddy County, or Chávez County?

6 A. No, I am not aware of any ONRW
7 Designations within those Counties.

8 Q. And despite that has the Department
9 made any determination if there would be
10 economic impact to this region that does not
11 have these Designations as a result of the
12 Designations elsewhere?

13 A. Can you please rephrase that question?
14 I don't quite understand what the question
15 is.

16 Q. Referring to the region of Lea, Eddy,
17 and Chávez County, in relation to these
18 Designations being made, has the Department
19 made any determination if there would be an
20 economic impact to this region?

21 A. No, we have not.

22 MR. MAXWELL: That's all the questions
23 I have today.

24 Thank you, your Honor.

25 HEARING OFFICER ORTH: Thank you,

1 Mr. Maxwell.

2 Commissioners, I will start with
3 you, Commissioner Vigil.

4 Do you have questions of Mr. Baca?

5 COMMISSIONER VIGIL: No, ma'am, I
6 don't.

7 HEARING OFFICER ORTH: All right.

8 Questions?

9 No.

10 All right. Commissioner Brancard.

11
12 EXAMINATION

13 BY COMMISSIONER BRANCARD:

14 Q. Two things, and I think I raised this,
15 or I have a vague recollection of raising
16 this at prior ONRW hearings:

17 When you have a stream segment,
18 and you have at least 2 that come from
19 another State, does the Department notify
20 other states, like the Colorado Department of
21 Health and Environment, of what the
22 Department is planning on doing here?

23 A. We did not directly notify Colorado of
24 our intent to designate these. We do work
25 with Colorado quite often on other Water

1 Quality Standards issues, and ONRWs is one of
2 the topics that we definitely talk about, but
3 we have not coordinated how the
4 implementation would work.

5 Q. Okay.

6 You did briefly -- totally
7 switching gears:

8 You did briefly discuss the
9 comments raised by the Department of Game and
10 Fish, Director Sloane, which were rather
11 extensive. He seemed to have a lot of issues
12 with these Designations. Did you also reach
13 an applicable agreement in the end?

14 A. Yes, we did. They submitted their
15 Comment Letter during the July early Notice
16 of the Petition, and so we had a period of
17 time there to work with them before we came
18 before the Commission to request the hearing.

19 The result of us working with the
20 Department of Game and Fish, we reevaluated
21 all the Special Trout Water Nominations, and
22 ended up removing 3 segments or 3 stretches
23 of water that we had discussed with the
24 Department of Game and Fish, and removed them
25 due to their concerns.

1 Q. Okay.

2 Maybe I misheard, but I thought
3 maybe you said earlier in your testimony that
4 the remaining Special Trout Waters in the
5 Designations you submitted met Regulation
6 Number 1, and also met other criterion.

7 A. Yes, Commissioner Brancard, members of
8 the Commission:

9 We met with the Department of Game
10 and Fish. We reevaluated the Special Trout
11 Water Nominations based on some other
12 concerns raised, and we developed a criteria
13 to address those concerns. One of those were
14 addressed by looking at retaining Headwater
15 Streams, so those are some of the Special
16 Trout Waters that are either Headwater
17 Streams that either have an additional
18 Special Designation, so they are Special
19 Trout Water, plus they are within a
20 Wilderness Area, Park, Or Preserve.

21 The third criteria to keep Special
22 Trout Waters was we had Public Comment in
23 direct support for some of the Waters.

24 Q. But the Rule still says "the following
25 State Special Trout Waters." It seems to

1 indicate that's...

2 You've written the Rule this time
3 to specifically name what criteria these
4 Waters fall under, which you haven't done in
5 the past. In the past you just listed the
6 Waters. This time you specifically say
7 "Special Trout Waters" in the listing.

8 I guess my question is if the
9 Department of Game and Fish suddenly decides
10 one of these segments is no longer a Special
11 Trout Water, does that impact this Rule?

12 A. We discussed this and we didn't think
13 that would eliminate the ONRW Designation;
14 that the ONRW Designation would remain.

15 COMMISSIONER BRANCARD: Thank you.

16 HEARING OFFICER ORTH: Commissioner
17 Patten.

18 COMMISSIONER PATTEN: Yes, thank you.

19
20 EXAMINATION

21 BY COMMISSIONER PATTEN:

22 Q. I guess I have some general questions
23 similar to what Commissioner Brancard was
24 touching on, and then I have a couple
25 questions about the specific language related

1 to Special Trout Waters.

2 You just testified that the
3 Designation of a Special Trout Water would
4 not...

5 If the State Game Commission were
6 to change their mind or adopt a new Rule
7 related to one of these Designations as a
8 Special Trout Water, if it was no longer
9 needed, it would not change this Rule. Is
10 that correct?

11 A. Chair Thomson, Commissioner Patten,
12 and members of the Commission:

13 That is correct. I believe the
14 ONRW Designation would remain.

15 Q. Okay. And if the State Game
16 Commission chose to adopt a new Special Trout
17 Water within an area, would it create any
18 obligation for this Commission to then adopt
19 that new Designation?

20 A. Commissioner Patten, I don't believe
21 it would create the obligation to designate
22 ONRWs, but it would create an eligibility
23 requirement that a river might then eligible
24 under Section 9B(1) to be Designated as an
25 ONRW, or Nominated under that criteria.

1 Q. Okay.

2 And then with a Special Trout
3 Water actually incorporated into this Rule
4 now, the specific language, would it create
5 any obligations for the State Game Commission
6 to consider a continuing planning process or
7 any of the other processes that the
8 Environment Department undergoes on a regular
9 basis for Water Quality regulations?

10 A. Commissioner Patten, members of the
11 Commission:

12 I don't believe that it would
13 require an additional requirement on the
14 Commission, or on the Game Commission.

15 If I might look to my more
16 experienced colleagues to see if they had
17 anything, or any more knowledge than I do on
18 that.

19 MS. WEATHERLY: We would bring
20 Ms. Shelly Lemon to address this question.

21 HEARING OFFICER ORTH: Thank you.

22 Ms. Lemon, do you swear or affirm
23 to tell the truth?

24 MS. SHELLEY LEMON: I do.

25 HEARING OFFICER ORTH: Please go

1 ahead.

2
3 MS. SHELLY LEMON,
4 after having been first duly sworn,
5 was examined and testified as follows:
6

7 MS. SHELLY LEMON: Mr. Chair,
8 Commissioner Patten:

9 It does not. The Designation of
10 an ONRW gives Antidegradation provisions, the
11 highest level of Antidegradation provisions
12 for Water Quality, so that's where these ONRW
13 Designations are important.

14 That highest level of protections
15 means that the Water Quality cannot be
16 degraded from the baseline Water Quality.
17 That's what the Designations provide to these
18 Waters.

19 COMMISSIONER PATTEN: Okay. It seems
20 like the Special Trout Water Designation or
21 term has been a State Game Commission Rule
22 type or jurisdiction, or whatever you want to
23 call it. Now it's being formally adopted
24 potentially, depending on how the Commission
25 votes, into this Rule, so we're kind of

1 conflating the 2.

2 I just want to make sure that the
3 State Game Commission Rulemaking process
4 would be separate still.

5 MS. SHELLY LEMON: Mr. Chair,
6 Commissioner Patten:

7 I believe that to be true.

8 In our Water Quality Standards in
9 20.6.4, one of the eligibility criteria is
10 the status of a Special Trout Water. It does
11 not mean that we are designating the Waters
12 as Special Trout Waters, we are using that to
13 provide Antidegradation provisions for Water
14 Quality.

15 COMMISSIONER PATTEN: Okay. Okay.
16 I've got a couple more specific questions I
17 think for Mr. Baca.

18 MS. SHELLY LEMON: Okay. Thank you.

19 COMMISSIONER PATTEN: Thank you.

20
21 FURTHER EXAMINATION

22 BY COMMISSIONER PATTEN:

23 Q. Okay. In a few cases, under what
24 would be Subparagraph 11 of specific reaches,
25 you used language that mirrors State Game

1 Commission rules, say, for example, 11(B) it
2 says:

3 "Rio Chama from Heron
4 Reservoir Outlet to Cottonwood
5 Flats."

6 In other cases you've used a more
7 generic reach Designation, say for the
8 Tanques or Cañada Tio Grande. Both Cañada
9 Tio Grande and Tanques, under State Game
10 Commission rules have more specific language
11 related to them. Is there a reason that you
12 used specific language for some, but not for
13 others?

14 A. Yes. Chair Thomson, Commissioner
15 Patten, and other members of the Water
16 Quality Control Commission:

17 I believe that was just to signify
18 that it would maybe be a smaller stretch of
19 the reach. It looks -- let me see.

20 Yeah, for that specific example
21 you provided with the Rio de los Pinos, that
22 was to identify the Upstream and Downstream
23 boundary, Surface Road E7E to private land 3
24 and a half miles Upstream.

25 Then with Tanques Creek, if we

1 look at the map, I believe that would be the
2 entirety of Tanques Creek from the point up
3 to the Headwaters I believe.

4 Q. Okay. The reason I ask is if the
5 Special Trout Water Designation is the sole
6 criterion, the State Game Commission Rule
7 does not include the whole Creek, and so that
8 would be for Tanques, Cañada Tio Grande, and
9 the Rio Cebolla Designation under 11(E).

10 A. Yeah, I believe that it was just
11 signifying the entirety of Tanques Creek
12 within the Specially Designated Area.

13 It should match, though when we
14 did the GIS mapping we used the Department of
15 Game and Fish's GIS layers to create our own
16 maps, our GIS maps. We should have used what
17 was published or what was used by the
18 Department of Game and Fish to create our
19 maps for Special Trout Waters, so they should
20 align with what was published by the
21 Department of Game and Fish.

22 Q. Okay. But what we're using is the
23 State Game Commission Rule's Designation of
24 Special Trout Water, which would be
25 different, or could potentially be different

1 than the map that would be published in the
2 New Mexico Administrative Code.

3 A. The maps of the Special Trout Waters?

4 Q. Not "maps," but the verbal description
5 of the "Special Trout Water."

6 MS. WEATHERLY: Ms. Guevara would like
7 to address this question.

8 HEARING OFFICER ORTH: Ms. Guevara, if
9 you would State your first and last name.

10 THE WITNESS: Lynette Guevara.

11 HEARING OFFICER ORTH: Thank you.

12 Do you swear or affirm to tell the
13 truth?

14 THE WITNESS: Yes.

15 HEARING OFFICER ORTH: Thank you.

16
17 MS. LYNETTE GUEVARA,
18 after having been first duly sworn,
19 was examined and testified as follows:

20
21 MS. LYNETTE GUEVARA: I came up to
22 help Mike out on this one:

23 Looking at the maps -- let me look
24 at this for a second.

25 We looked at this pretty



1 carefully. Can you tell us what the wording
2 was for Tanques? Because I believe, as Mike
3 said, that was the coverage that we had
4 received from Game and Fish, and this wasn't
5 brought to our attention when we had a series
6 of conversations with Game and Fish about the
7 listings, or the Nominations, excuse me.

8 COMMISSIONER PATTERN: In reviewing
9 the Petition I looked up State Game
10 Commission Rule 19.31.4. It's the Hunting
11 and Fishing Rule, or our Fishing Rule. For
12 example, for Tanques it says it is Special
13 Trout Waters:

14 "From Forest Service Road 93
15 crossing Upstream to its
16 Headwaters."

17 That is above the confluence that
18 is mapped in the Petition.

19 MS. LYNETTE GUEVARA: Okay. I'll take
20 ownership of this.

21 I managed the 303(d)/305(b) list
22 for 19 years. Part of our thought process
23 when we were nominating ONRWs and other
24 Waters is they are referenced on our
25 303(d)/305(b) integrated reporting list. I

1 would speculate in this case that road
2 crossing is very close to what we chose as
3 the confluence to make that Designation.

4 If it pleases the Commission we
5 can change it to the exact wording of
6 "Special Trout Waters," but from just a
7 stream reach management perspective, that's
8 probably why we made that call to move that
9 point.

10 I respect what you're saying, and
11 we're completely fine making that change if
12 it pleases the Commission.

13 COMMISSIONER PATTEN: Okay. The one
14 I'm most interested in is the Rio Cebolla.
15 The actual State Game Commission Rule refers
16 to:

17 "From Seven Springs Day Use
18 Area Upstream to the Headwaters
19 including McKinney Pond."

20 The Petition includes -- let me
21 back up or I'll just restart:

22 The Petition includes the
23 Designation all the way down to Calaveras
24 Creek, which is I think a few miles.

25 MS. LYNETTE GUEVARA: One moment,

1 please.

2 Another goal we had with this
3 Petition is filling gaps between Designated
4 ONRW reaches, and so we're looking at the map
5 to see if that's part of this situation.

6 (Ms. Lynette Guevara confers with
7 Mr. Michael Baca.)

8 MS. LYNETTE GUEVARA: Mike and I are
9 conferring, and we believed we used the
10 layers from New Mexico Game and Fish to make
11 that. Again, if the Commission would like us
12 to do so, we can reduce that.

13 COMMISSIONER PATTEN: Okay. I think
14 that's all my questions.

15 HEARING OFFICER ORTH: Thank you.

16 Mr. Chair.

17 CHAIRMAN THOMSON: I have no
18 questions.

19 HEARING OFFICER ORTH: All right.
20 Thank you.

21 VICE CHAIRPERSON ZEMLICK: I have no
22 questions. Thank you.

23 HEARING OFFICER ORTH: All right.
24 Commissioner Frey.

25 COMMISSIONER FREY: Thank you for your

1 testimony; I have no questions.

2 Thank you.

3 HEARING OFFICER ORTH: Commissioner
4 Dominguez.

5 COMMISSIONER DOMINGUEZ: Madam Hearing
6 Officer, I do have questions, and I'll try to
7 keep it within your one day time frame in
8 mind.

9 With that said, I know we've been
10 going for a while, if we wanted to take a
11 break before I launch into a dissertation.

12 HEARING OFFICER ORTH: All right. No,
13 we can certainly do that. Thank you very
14 much.

15 Let's take 15 minutes.

16 (The Water Quality Control
17 Commission Hearing recessed from 10:33 a.m.
18 to 10:50 a.m.)

19 HEARING OFFICER ORTH: All right. We
20 are back after a short break. When we broke
21 Commissioner Dominguez just wanted to ask his
22 questions of the Environment Department.

23 MS. WEATHERLY: Madam Hearing Officer,
24 before Commissioner Dominguez asks his
25 questions the Department has additional

1 information to share in response to
2 Commissioner Patten's questions, if we may
3 take a moment.

4 HEARING OFFICER ORTH: Yes, go ahead.

5 MS. WEATHERLY: Lynette Guevara would
6 like to address his question.

7 MS. LYNETTE GUEVARA: Thank you for
8 entertaining a lengthier explanation:

9 We have some map resources that
10 Shelly is going to pull up here and display
11 on the screen, or show you, if she can, here
12 in the room.

13 For Rio Cebolla, I just wanted to
14 elaborate more on that particular Nomination.

15 We have an online public-facing
16 GIS website called ArcGIS, and we put the
17 Special Trout Water layer on there that we
18 got directly from New Mexico Game and Fish so
19 people could see how that line work laid out
20 with our Nominating line work. We also have
21 the ONRW line work up there.

22 What we found -- we are not able
23 to get it on the screen for people at home or
24 in their office.

25 What we found was there were

1 discrepancies. I would argue that NMED's
2 hydrologic line work is better and more
3 up-to-date than the Game and Fish line work
4 that we received, and we relayed that to
5 them.

6 Our GIS specialists who worked on
7 it for this particular example, the
8 Headwaters actually go off to the east. They
9 don't go to the point that was in the Game
10 and Fish Special Trout Water line work.

11 We then corresponded with Game and
12 Fish about this, and we will continue to help
13 improve the line work, but we feel confident
14 that we are displaying what the Headwaters
15 are, and the wording for this particular
16 Special Trout Water -- let's see.

17 Shelly, if you can blow up the
18 dialogue box.

19 It says: "... to Headwaters."

20 There are some discrepancies like
21 this, and this is why we extended the line
22 work to what we know to be "Headwaters."

23 COMMISSIONER PATTEN: May I?

24 HEARING OFFICER ORTH: Yes.

25 COMMISSIONER PATTEN: Okay. Thank

1 you.

2 As the Headwaters, I'm okay with
3 the description there. What I was referring
4 to is the State Game Commission Rule. That's
5 really what designates a Special Trout Water,
6 not the Department of Game and Fish. It's
7 State Game Commission Rule that's part of the
8 New Mexico Administrative Code.

9 That Rule refers to the Special
10 Trout Water "ending at the Rio Cebolla Day
11 Use Area," which is about halfway...

12 Keep going Upstream.

13 Keep going Upstream.

14 There is a parking area in there
15 somewhere.

16 I guess my point is that Special
17 Trout Water does not extend all the way to
18 Calaveras Canyon, it's somewhere up in the
19 Rio Cebolla Canyon.

20 MS. LYNETTE GUEVARA: Okay. Huh.

21 COMMISSIONER PATTEN: I would just
22 refer to the Game Commission Rule as the
23 description for "Special Trout Waters."

24 MS. LYNETTE GUEVARA: Yes, we can do
25 that. Thank you.

1 HEARING OFFICER ORTH: All right.
2 Thank you for that clarification.

3 Commissioner Dominguez.

4 COMMISSIONER DOMINGUEZ: Thank you,
5 Madam Hearing Officer.

6
7 EXAMINATION

8 BY COMMISSIONER DOMINGUEZ:

9 Q. Mr. Baca, thank you for your testimony
10 today. Fortunately my fellow Commissioners
11 covered a few of the questions I had, but I
12 have got a few follow-up or a different path
13 of questioning:

14 Part of my questioning will start
15 with the Petition itself, Exhibit 4 I
16 believe.

17 A. (Witness complies.)

18 Q. I'm looking at page 8, where you talk
19 about a summary of Water Quality conditions.

20 In the paragraph before the Table
21 you say:

22 "Many of the proposed Stream
23 Reaches are meeting all monitored
24 Water Quality Standards for the
25 Designated uses."

1 When you use the term "many," can
2 you qualify that for me, or quantify the term
3 "many"?

4 A. Thank you for the question.

5 Chair Thomson, Commissioner
6 Dominguez, and other members of the
7 Commission:

8 I think it would be very difficult
9 to quantify that, I think, because you could
10 say that on maybe a pollutant-by-pollutant
11 basis and whether or not it's meeting a
12 standard, meaning all -- okay. Meaning all.
13 I said...

14 We might have parameters in the
15 water that we don't monitor for that we might
16 not have information to say that it's meeting
17 the standard, and I think that's why, with
18 all the reaches, why it is, because it's hard
19 to say with any certainty or making it too
20 complex, with pages and pages of data to
21 really analyze it and say exactly how many
22 are meeting each standard of safer
23 temperature, or safer DO, or any other
24 parameter that we have information for.

25 Just looking at the list, I would

1 have to compare the two, Table 1 and Table 2,
2 to see how many are not on there, just to
3 see, but I think that statement refers to the
4 specific pollutants for which we have data
5 for, but I would say I think it's too
6 numerous to actually quantify.

7 If you recall Appendix B to the
8 Nomination, it was hundreds of pages of Water
9 Quality Data, so it's very difficult to boil
10 that down into a clear analysis of what is
11 and isn't meeting everything.

12 The way we presented the
13 information was what is not meeting our
14 Standards, or what data do we have that
15 doesn't meet the Standards.

16 Q. Okay. Fair enough.

17 Let's flip, then, and you referred
18 to Table 2.

19 A. (Witness complies.)

20 Q. Looking at Table 2 of the segments
21 that are not impaired and the rough
22 calculations of Non-Impaired is about 20% of
23 those segments;

24 Impaired segments are about 41%;
25 and,

1 Not Assessed, 39%.

2 Those are my rough calculations
3 based on Table 2.

4 For example, the segments that are
5 Not Assessed, if there is no baseline data,
6 how does the Department determine
7 Degradation?

8 A. Very good question.

9 Thank you, Commissioner Dominguez,
10 Chair Thomson, and the rest of the
11 Commission:

12 I believe it would be determined
13 on a case-by-case/applicant-by-applicant
14 basis. If an applicant came in, I think that
15 the Department would either have to look at
16 existing uses and see if we have any
17 information to see if any existing use has
18 been achieved. If not, we may require some
19 monitoring for some period of time to
20 establish a baseline condition in order for
21 us to do an Antidegradation analysis.

22 Q. Okay.

23 Let me flip the question again to
24 the Impaired segments:

25 These segments that are currently

1 Impaired, is that the baseline?

2 A. (No audible response.)

3 Q. And then at the point of time that the
4 Commission approves these Designations,
5 that's the baseline for determining
6 Degradation. We have an Impaired stream, so
7 that has mapped a baseline.

8 A. That is correct. That would be the
9 set baseline for which the Water Quality
10 cannot be degraded below for specific
11 pollutants.

12 To clarify, when we do an
13 Antidegradation Review it's done on a
14 pollutant-by-pollutant basis. For some of
15 these Impairments, like for temperature, we
16 might be reviewing for that, but it might not
17 be Impaired for other parameters, so
18 Antidegradation wouldn't apply to those other
19 parameters. It would apply to...

20 The permit would only request the
21 temperature portion.

22 Q. Okay.

23 I want to go back to your previous
24 answer that was talking about the segments
25 that have not been assessed:

1 Maybe I'm looking at this too
2 simplistically. If one of the key things
3 with an ONRW Designation is their cannot be
4 Degradation of these new Tier 3 Waters.
5 Wouldn't it be prudent to actually have data
6 for the Commission to work off of?

7 A. (No audible response.)

8 Q. Whereas almost 40% of the stream
9 segments have not been assessed, and the
10 Commission is saying there cannot be
11 Degradation, but we actually don't have
12 baseline data there. To me it almost makes
13 this circular argument of what the Commission
14 is approving.

15 A. Commissioner Dominguez, Chair Thomson
16 and other members of the Commission:

17 I believe that our monitoring
18 strategies are developed to implement our
19 resources the best that we can. For some of
20 these Stream Reaches, they may be very
21 difficult to access, and maybe the data that
22 we do get from monitoring these may not be as
23 valuable as some of the other reaches within
24 the area that we are visiting.

25 We may not have indications that

1 there would be sources of Degradation or that
2 we don't have pollutants or permittees in the
3 area, so these creeks may not be getting the
4 data collected because of the resources
5 required to do that.

6 I think I'll leave it at that.

7 Q. Sure.

8 MS. WEATHERLY: Ms. Guevara would like
9 to address this question.

10 MS. LYNETTE GUEVARA: I would just
11 like to add to that:

12 I think that Mike did a great job
13 summarizing the challenge of sampling Water
14 Quality in Headwater Streams, especially with
15 a monitoring staff of 5 who monitor around
16 the entire State.

17 We have made a lot of changes in
18 initiatives in our section to pull more staff
19 into sampling as much as possible. I'm happy
20 to announce we actually have an official
21 Volunteer Monitoring Coordinator position
22 now, who is filled by this gentleman right
23 here (indicating). He is on the Standards
24 and Outreach team.

25 We also have all sorts of ideas to

1 share with our NGO partners about hooking
2 into this program called Adventure
3 Scientists, to get the people, you know, who
4 love to backpack, and train them up and get
5 them up there and get data for these
6 Headwater systems.

7 Also our Bureau regularly
8 coordinates with the U.S. Forest Service. We
9 just had our Annual Meeting last week, and
10 this is always a topic; how to get more data
11 for our ONRWs to know and ensure that we're
12 protecting them. Rest assured, it's high on
13 our mind.

14 COMMISSIONER DOMINGUEZ: Thank you.

16 FURTHER EXAMINATION

17 BY COMMISSIONER DOMINGUEZ:

18 Q. Now let's switch to the point in the
19 Petition regarding the Antidegradation
20 Policy. I'm actually looking at the Petition
21 page 4:

22 No Degradation is allowed except
23 under certain circumstances developing to
24 accommodate public health or safety
25 activities in the area. With that,

1 Degradation is supposed to be temporary and
2 can't last more than 6 months. Given any of
3 those situations, those circumstances
4 actually have to come before the Commission.
5 There is a process to do that.

6 Are you aware -- I think it was
7 mentioned earlier that the first ONRW
8 Designation was 2005. Have there ever been
9 circumstances that any of these emergency
10 situations have been brought before the
11 Commission?

12 A. Commissioner Dominguez, Chair Thomson,
13 and other members of the Commission:

14 I personally am not aware of any
15 emergency actions that have occurred where
16 anyone has brought a Petition to the
17 Commission due to those activities.

18 Q. Okay. If we want to turn to other
19 staff members with more experience, or that
20 have been there for --

21 MS. SHELLY LEMON: Longevity.

22 MS. WEATHERLY: Ms. Lemon would like
23 to address this question.

24 MS. SHELLY LEMON: Mr. Chair,
25 Commissioner Dominguez:

1 There have been situations where
2 there have been emergency measures in like
3 the wildfire season, where the Forest Service
4 or others, the State Management Agency takes
5 emergency measures to protect the forest and
6 the resource, and they work with us. They
7 will submit notification to us in ONRWs.

8 Because it is an emergency
9 situation, we don't require permit prior
10 approval, and there is a process in the
11 regulations for that in 20.6.4.

12 We also have non-emergency
13 measures for the piscicide general permit
14 that the Department of Game and Fish uses.
15 When its in an ONRW, they notify the
16 Department, the Department reviews it and
17 makes sure that they are meeting the
18 requirements in 20.6.4, and we work with the
19 Department of Game and Fish to ensure that
20 those regulations are met.

21 COMMISSIONER DOMINGUEZ: Okay. You
22 actually answered my second question on that,
23 and that was whether, with fire response, if
24 the Department was being notified of that.

25 Let's go back to the first

1 question for the non-emergency situations:

2 I don't know if it's in the -- I
3 think it's in EPA's Antidegradation Policy.
4 The example they use is a culvert or a bridge
5 has to be repaired that's within the stream
6 segments. That was more where I was leading
7 with that question; whether any of those
8 types of situations have ever occurred.

9 My rationale for asking that is if
10 we're on about the sixth series of ONRW
11 Designations, there are miles and miles of
12 stream segments that, at some point in time,
13 Forest Service, or State DOT, or somebody
14 will have to do work, and that requires a
15 process both through the Environment
16 Department and, in the end, before this
17 Commission.

18 I don't recall any, but your
19 memory is probably better than mine.

20 MS. SHELLY LEMON: Mr. Chair,
21 Commissioner Dominguez:

22 I'm not sure about that, but I do
23 know there has been road construction. Most
24 of the prior ONRW Designations have been in
25 Wilderness Areas, which do not have vehicle

1 traffic.

2 The one where we get a lot of work
3 on is the Valle Vidal. We do get
4 notification when they are working on roads.
5 I don't recall any, like, across streams, but
6 near streams. That requires 404 permitting
7 through the Army Corps of Engineers, and so
8 we collaborate and coordinate with the Army
9 Corps and the permittee on those activities.

10 COMMISSIONER DOMINGUEZ: So at what
11 point in time would the process require staff
12 to come before the Commission?

13 MS. SHELLY LEMON: Mr. Chair,
14 Commissioner Dominguez:

15 Looking at the regulations, it
16 is -- let's see.

17 For non-emergencies it's after
18 providing a 30-day public review and comment
19 period.

20 MR. BACA: Yes, Commissioner
21 Dominguez:

22 "[For emergencies] within 30
23 days of the initiation of the
24 emergency response action the
25 discharger shall provide a summary

1 of the action taken, including all
2 actions taken to comply with [the
3 requirements of the subparagraphs
4 within this]."

5 I'm looking at 20.6.4.8A(3), or is
6 it A(2)?

7 No, A(3)(c)(iv).

8 For emergency actions, after 30
9 days of initiating that, they have to provide
10 a report of what was done.

11 For non-emergency actions after a
12 30-day Public Comment and review period, and
13 receiving a recommendation from the
14 Department, then they bring it to the
15 Commission and see if their activity would be
16 allowed.

17 MS. SHELLY LEMON: And Mr. Chair,
18 Commissioner Dominguez:

19 I believe most of the activities
20 that have happened in an ONRW to date have
21 been avoidance, so it's not impacting the
22 water resource.

23 Again, most of our interactions
24 are with wildfire suppression and with the
25 piscicide treatments to bring in native fish

1 populations.

2 COMMISSIONER DOMINGUEZ: Thank you,
3 Ms. Lemon.

4 Let's switch gears, Mr. Baca:
5

6 FURTHER EXAMINATION

7 BY COMMISSIONER DOMINGUEZ:

8 Q. Previously you answered some questions
9 about the Chevron mining area. It is my
10 understanding that is undergoing reclamation;
11 correct?

12 A. Chair Thomson, Commissioner Dominguez,
13 and other members of the Commission:

14 That is my understanding. It's in
15 the Superfund program and undergoing cleanup
16 as we speak.

17 Q. Will any of that reclamation, or
18 potentially any of those activities create
19 any ongoing disturbances that may create
20 Degradation for the adjacent stream segment
21 that's being proposed?

22 A. Commissioner Dominguez, Chair Thomson,
23 and the rest of the Commission:

24 I believe that permit is, you
25 know, already issued for those activities and

1 that Degradation was considered within that
2 permit. The baseline, I believe, is already
3 set based on the issuance of that permit and
4 the Water Quality Data that we currently
5 have.

6 I would think that if the entity
7 complied with its permit and its conditions
8 of monitoring and BMPs, that no Degradation
9 should occur to what they are permitted to
10 discharge or allowed to enter the stream.

11 Q. Okay. Thank you for that answer.

12 If it's accounted for within that
13 permit of BMPs, there should not be
14 something...

15 I guess where my line of thought
16 was going is if we've got ongoing reclamation
17 in an area, would it be more prudent to
18 postpone proposing that stream segment until
19 those reclamation projects have been
20 completed, and therefore not impeding the
21 reclamation?

22 A. (No audible response.)

23 Q. I mean we want that to get cleaned up
24 and taken care of, so it's almost as if we're
25 not sure. We want the reclamation done and

1 cleaned up, but if it's going to impede
2 reclamation such that there is not
3 Degradation, we get into creating a little
4 bit of a conundrum there.

5 However, if the Department has
6 taken that into consideration with the
7 permit, I'll go with that.

8 I think my last set of questions
9 evolve around the fish hatcheries that have
10 Discharge Permits and are within a proposed
11 stream segment or above a proposed stream
12 segment:

13 Those are NPDES permits and an EPA
14 permit.

15 A. That is correct.

16 Q. In reviewing Director Sloane's letter,
17 during the Public Comment period he raised
18 concerns of those fish hatcheries being able
19 to properly serve their function, and the
20 potential, if EPA changed something up in
21 that permit, the potential for those fish
22 hatcheries to, in essence, no longer exist,
23 which then basically offsets Special Trout
24 Waters because they are producing trout to go
25 into these stream segments that we're

1 protecting here.

2 It gives me pause that we're
3 potentially placing fish hatcheries that are
4 doing a phenomenal job of raring fish for all
5 these Special Trout Waters, yet now they are
6 going to be under a further microscope of not
7 having any exceedances. It gives me pause in
8 that we're potentially setting them up for
9 failure.

10 I know that was more of a
11 statement than a question, but the
12 Environment Department met with Game and
13 Fish. What was the outcome of that
14 discussion dealing with the fish hatcheries?

15 A. Commissioner Dominguez, Chair Thomson,
16 and the rest of the Commission:

17 We did discuss the NPDES permit
18 issues and the possibility of hamstringing
19 them or limiting their ability to produce
20 fish.

21 In looking at their permits, and
22 in talking to them, it sounds like they are
23 pretty much at the max capacity to produce
24 fish at most of these hatcheries. If they
25 plan to expand, they would have to do further

1 treatment for discharging or else they are
2 facing Standards violations.

3 My understanding is that they were
4 already up to the limit of their production
5 right now, and that expansion would require
6 significant investment in cleaning up the
7 water before actually discharging it back in.

8 In other words there would be some
9 work that would have to go into any expansion
10 or increase in order to permit further
11 discharges that should occur in the future.

12 From our conversations it was
13 clear that the Department of Game and Fish
14 felt that they did not have plans to expand
15 those any further than they are at this
16 point.

17 Q. Okay.

18 I don't think my line of
19 questioning was so much about expansion but
20 continuing operations, and the concern of EPA
21 changing anything in their permit that might
22 cause a hardship to continuing operations,
23 but not expanding.

24 A. Commissioner Dominguez, Chair Thomson,
25 and the rest of the Commission:

1 I do believe the permit has been
2 already issued, and so I don't think they
3 would be able to reopen it and say, "Now that
4 you are in an ONRW, you have to do a
5 different Antidegradation analysis." I
6 believe it is a re-issuance of a permit that
7 is existing, and so I don't think that any
8 further requirements would become a burden to
9 the re-issuance of their permit.

10 Of course we're not the permitting
11 authority right now, and you never know what
12 could happen, but in theory that new level of
13 scrutiny should not apply to an existing
14 permittee.

15 Q. But when that permit comes due for
16 renewal the issuing agency can modify the
17 permit at that point in time; correct?

18 A. I believe they would be able to.

19 I better look to my Bureau Chief
20 to answer permit questions rather than me.

21 MS. WEATHERLY: Ms. Lemon.

22 MS. SHELLY LEMON: Mr. Chair,
23 Commissioner Dominguez:

24 With a permit re-issuance,
25 typically they remain the same unless there

1 are changes in operations. Like, Mr. Baca
2 said, if they increase their discharge or
3 their capacity, and they are receiving and
4 treating for different types of pollutants,
5 then the permit would change. If it's the
6 same conditions from the prior permit,
7 typically you don't see changes, or there are
8 minor changes.

9 I will also mention that the State
10 is pursuing NPDES primacy, so we should
11 hopefully be in a better position and not
12 dependant on EPA's decisions, but we can make
13 those decisions as a State in working with
14 the permittees to implement permits that are
15 appropriate and protective of Water Quality.

16 I'll just put that little nugget
17 in there, too.

18 COMMISSIONER DOMINGUEZ: Okay. Thank
19 you, Ms. Lemon.

20
21 FURTHER EXAMINATION

22 BY COMMISSIONER DOMINGUEZ:

23 Q. There was a little bit of discussion
24 about the Wastewater Treatment Plant that is
25 Direct Discharge. Am I correct that it is a

1 Direct Discharge into the stream segment or
2 is it above the proposed segment?

3 A. Chair Thomson, Commissioner Dominguez:

4 The Wastewater Treatment plant is
5 Upstream of the Nominated ONRW segment, so it
6 is not currently discharging to what we have
7 Nominated.

8 COMMISSIONER DOMINGUEZ: Okay. Thank
9 you.

10 Madam Hearing Officer, I have no
11 further questions.

12 HEARING OFFICER ORTH: Thank you,
13 Commissioner Dominguez.

14 Commissioner Gilliam.

15 COMMISSIONER GILLIAM: No questions.

16 HEARING OFFICER ORTH: All right.
17 Thank you.

18 We have at least 2 Commissioners,
19 I believe, on the platform.

20 Commissioner Paladugu.

21 COMMISSIONER PALADUGU: No questions.

22 HEARING OFFICER ORTH: Thank you.

23 Commissioner McWilliams.

24 COMMISSIONER MCWILLIAMS: Yes, good
25 morning. I just have a few question:

EXAMINATION

BY COMMISSIONER McWILLIAMS:

Q. I was wondering if you could elaborate on what other trout waters would now have an eligibility requirement, if you could elaborate on that a little bit.

A. Can you repeat the question? I'm not sure I understand what was asked.

Q. I take it from I believe Commissioner Brancard's questions that you answered that there might be an eligibility requirement for other Trout Waters in the State, and I was just wanting to know a little bit more about that.

A. Chair Thomson, Commissioner McWilliams, and other members of the Commission:

I don't believe that the ONRW Designation today will designate any Waters as Special Trout Waters. We are using the criteria under 9B(1) in that they are Special Trout Waters to qualify them as an ONRW. I don't think there is the opposite effect of where designating the stream as an ONRW would

1 qualify it to become a Special Trout Water.

2 COMMISSIONER McWILLIAMS: Okay. Thank
3 you very much.

4 HEARING OFFICER ORTH: Are there any
5 other Commissioners on the platform?

6 All right. Is there any follow-
7 up, Ms. Weatherly?

8 MS. WEATHERLY: None from the
9 Department.

10 HEARING OFFICER ORTH: All right.
11 Thank you very much.

12 Any reason not to excuse Mr. Baca,
13 Ms. Lemon, and Ms. Guevara?

14 No.

15 All right. Thank you all very
16 much.

17 MS. WEATHERLY: Thank you.

18 THE WITNESS: Thank you.

19 HEARING OFFICER ORTH: We'll turn now
20 to Ms. Fox.

21 MS. FOX: Good morning again,
22 Commissioners. Tannis Fox representing
23 Amigos Bravos and Trout Unlimited. We have a
24 very short presentation and summary of
25 Mr. Roper's testimony.

1 HEARING OFFICER ORTH: Mr. Roper, do
2 you swear or affirm to tell the truth?

3 THE WITNESS: I do.

4 HEARING OFFICER ORTH: Thank you.

5 You are going to have to speak
6 much louder than that and turn on your
7 microphone.

8 THE WITNESS: I do.

9 HEARING OFFICER ORTH: Thank you.

10
11 MR. DANIEL ROPER,
12 after having been first duly sworn,
13 was examined and testified as follows:

14
15 EXAMINATION

16 BY MS. FOX:

17 Q. Please state your name.

18 A. Dan Roper.

19 Q. What is your current employment?

20 A. I am the New Mexico Program Lead for
21 Trout Unlimited. In this Petition I oversee
22 a team of 5, and work closely with our
23 grassroots members across the State,
24 including 4 local chapters, and our nonprofit
25 State and Federal agency partners.

1 Our mission is focused on bringing
2 together diverse interests to care for and
3 recover our rivers and streams such that our
4 children can experience the joy of wild and
5 native trout.

6 Q. What is your educational background?

7 A. I have a Bachelors Degree in
8 Environmental Sciences from the University of
9 North Carolina at Ashville.

10 I also have a Masters Degree in
11 Public Policy from Oregon State University,
12 with an emphasis in Natural Resource
13 Management.

14 Q. What is your work background?

15 A. I have worked for nonprofit
16 organizations, and State and Federal agencies
17 in 3 western states.

18 Before stepping into the role of
19 New Mexico Program Lead, I led Trout
20 Unlimited's policy and advocacy work for
21 nearly 5 years.

22 I am also an angler who is
23 familiar with many of the Nominated Waters in
24 the Petition before you today, and I
25 represent a community of anglers familiar

1 with New Mexico's trout streams and the
2 Nominated Waters.

3 Q. Is AB/TU Exhibit 1 an accurate copy of
4 your Resumé?

5 A. Yes, it is.

6
7 Q. Can you identify AB/TU Exhibit 2?

8 A. Yes, I can.

9 AB/TU Exhibit 2 is my Direct
10 Testimony in this matter.

11 Q. Do you adopt that testimony as your
12 sworn testimony today?

13 A. I do.

14 Q. Mr. Roper, would you please give a
15 brief summary of your testimony for the
16 Commission.

17 A. Certainly.

18 First, thank you, Commissioners
19 for the opportunity to be here before you
20 today. This is my first time in front of the
21 Water Quality Control Commission, and I
22 promise to keep it brief:

23 As an angler, as a Father of 2
24 young kids, and as someone who is familiar
25 with many of the Nominated Waters in the

1 Petition before you, I am happy to speak in
2 support of this Petition as presented by the
3 New Mexico Environment Department.

4 Today I represent an organization
5 comprised of members whose knowledge of New
6 Mexico's waters, especially its trout
7 streams, is unrivaled. In my nearly 6 years
8 of working for Trout Unlimited I have yet to
9 encounter a trout stream in this State,
10 however small or remote, that at least one of
11 our members isn't familiar with. As such, my
12 written testimony includes many references to
13 specific Waters that are being Nominated
14 today.

15 Based on our familiarity with the
16 Waters in this Petition and trout streams in
17 particular, Trout Unlimited unequivocally
18 endorses Designation of the stream segments
19 nominated today by NMED. My testimony
20 focuses specifically on segments that are
21 managed as Special Trout Waters and have been
22 Designated as such:

23 Outside of the fishing community
24 the term "Special Trout Waters" is not widely
25 understood. But make no mistake, these

1 Waters include many of the best and most
2 popular places to fish in all of New Mexico,
3 while others are vital to the future of
4 native trout conservation.

5 The list of Nominated Waters being
6 considered today includes many of the State's
7 most popular rivers for trout fishing like
8 the Rio Chama, the Pecos, the Red River, the
9 Cimarron, the Rio Guadalupe, and the Rio de
10 los Pinos, all of which include segments
11 managed as Special Trout Waters by the New
12 Mexico Department of Game and Fish.

13 These Waters are not only popular
14 with New Mexico anglers, but they are also
15 popular with out-of-state visitors, and as
16 such many of our local fishing guides and fly
17 shops regularly take out-of-state visitors to
18 fish on these Waters. That activity creates
19 jobs, it supports local businesses, and
20 contributes to our tax base. Without a doubt
21 the collective body of Waters in this
22 Petition is a major contributor to the
23 State's outdoor recreation and its tourism
24 economy.

25 This Petition also includes

1 numerous stream segments managed as Special
2 Trout Waters due to their importance for
3 native trout conservation, including many
4 streams that contain core populations of Rio
5 Grande Cutthroat Trout, New Mexico's State
6 Fish.

7 I would like to stress that
8 preserving clean water in these streams is
9 absolutely essential to the survival of
10 native trout, and for keeping species like
11 the Rio Grande Cutthroat off the Federal
12 Endangered Species List.

13 Today fish occupy just a small
14 percentage of their historic range, somewhere
15 around 12%. Much of their remaining habitat
16 exists in smaller Headwater streams like the
17 Cebolla, the Columbine, the San Cristóbal,
18 the Frijoles, Tanques, and Tio Grande Creeks,
19 all of which are Nominated in the Petition
20 before you. It is in these places that
21 native trout continue to persist, relying on
22 sources of cold clean water that Headwater
23 Streams reliably provide.

24 As anglers and people working in
25 trout conservation we understand that you

1 can't have great fishing, and you can't have
2 healthy trout without clean water. While
3 trout are hardy and an adaptable species that
4 can survive in less-than-ideal conditions, to
5 thrive trout require specific parameters for
6 things like temperature, pH, dissolved
7 oxygen, turbidity, as well as an absence of
8 fluitants like pesticides, excess nutrients
9 and heavy metals.

10 Not only to drought require clean
11 water, but their presence in a Watershed is
12 often considered an indicator of good Water
13 Quality. One thing we like to say at Trout
14 Unlimited is that if trout are doing well
15 Upstream, things are probably better
16 Downstream, too.

17 In addition to preserving Water
18 Quality, maintaining the ability to restore
19 habitat and maintain or enhance native fish
20 barriers that protect Upstream populations
21 are also critically important conservation
22 tools. As an organization we are confident
23 that these actions can and will continue
24 under ONRW Designations.

25 The last thing I'll add is that

1 preserving healthy Watersheds and clean water
2 is also a hedge against stressors like
3 drought and Climate Change. This benefits
4 everyone from agriculture and acequias, to
5 municipal water users and the fishing
6 community. These things are all critically
7 important to the communities and the culture
8 of Northern New Mexico, and they all benefit
9 from clean water.

10 As such I can attest to these
11 Waters as being valuable resources to the
12 State, and deserving the highest possible
13 Water Quality protection. By keeping trout
14 streams clean and fishable, we offer hope and
15 opportunity to future generations.

16 MS. TANIS: This concludes Mr. Roper's
17 summary. I would like to move for admission
18 of AB/TU Exhibits 1 and 2.

19 HEARING OFFICER ORTH: All right. Any
20 objection, Ms. Weatherly or Mr. Maxwell?

21 All right. No.

22 Thank you. Exhibits 1 and 2 are
23 admitted.

24 (AB/TU Exhibit 1 was marked for
25 identification.)

1 (AB/TU Exhibit 2 was marked for
2 identification.)

3 MS. FOX: Mr. Roper now stands for
4 questions.

5 HEARING OFFICER ORTH: Thank you.

6 Ms. Weatherly, do you have
7 questions of Mr. Roper?

8 MS. WEATHERLY: None from the
9 Department.

10 HEARING OFFICER ORTH: Thank you.

11 Mr. Maxwell, do you have questions
12 of Mr. Roper?

13 MR. MAXWELL: Just a few.

14
15 EXAMINATION

16 BY MR. MAXWELL:

17 Q. Hello, Mr. Roper; my name is Nick
18 Maxwell.

19 I would like to find out if, in
20 your position, do you hear complaints about
21 the habitat for trout from your members?

22 A. Mr. Maxwell --

23 Correct me if I need to go through
24 the Chair; I can do that as well. This is my
25 first time here so I'm still learning the

1 process:

2 But Mr. Maxwell, yes. Habitat
3 considerations are a really important factor
4 for the future of native trout and wild trout
5 conservation, and there are a number of
6 places all across the State where we are
7 concerned about the quality of habitat.

8 Q. Specific to this Wastewater Treatment
9 Plant that's been discussed during this
10 hearing have you received complaints specific
11 to that facility?

12 A. Mr. Maxwell, no I have not received
13 complaints and I am not aware of any.

14 Q. I would like to ask the same question
15 regarding the Chevron mining facility, too:

16 Are you aware of any complaints
17 from your members regarding the Waters near
18 that area, or downstream from it?

19 A. Mr. Maxwell, no, not at this time.

20 Water Quality in the Red River
21 below the Treatment Plant you mentioned was,
22 for a long time, a concern of our members.
23 The Water Quality in that stretch of river is
24 much better than it used to be and it's not a
25 place where I hear of active concerns among

1 our membership in terms of when it comes to
2 trout fishing or trout conservation.

3 Q. Related to the fish hatcheries that
4 have been discussed have your members
5 expressed concerns regarding our Waters in
6 relation to these fish hatcheries?

7 A. Mr. Maxwell, no, our members have not
8 expressed concerns.

9 A priority of ours is making sure
10 our fish hatcheries are modern and up-to-date
11 and can meet any of their permit
12 requirements, and we are 100% committed to
13 that. But I have not heard complaints among
14 our membership about Walter quality and fish
15 hatcheries at this time.

16 MR. MAXWELL: Thank you very much for
17 answering my questions. That's it for me.

18 HEARING OFFICER ORTH: Thank you,
19 Mr. Maxwell.

20 I'll start on that side this time:

21 Commissioner Gilliam, do you have
22 questions of Mr. Roper?

23 COMMISSIONER GILLIAM: No questions.

24 HEARING OFFICER ORTH: Mr. Dominguez.

25 COMMISSIONER DOMINGUEZ: Thank you,

1 Madam Hearing Examiner; I do have a quick
2 question:

4 EXAMINATION

5 BY COMMISSIONER DOMINGUEZ:

6 Q. Mr. Roper, thank you for your
7 testimony today.

8 You were here and heard the prior
9 testimony and the prior line of questioning.
10 Is that correct?

11 A. Mr. Chair, Commissioner:

12 Yes, I was here, and I did hear
13 it.

14 Q. Okay. You heard the line of
15 questioning and comments regarding the
16 concerns over the fish hatcheries.

17 A. Yes.

18 Q. If one or all of those fish hatcheries
19 cease to exist, what impact would that have
20 on the Mission of Trout Unlimited?

21 A. Mr. Chair, Commissioner Dominguez:

22 It would have a significant impact
23 largely when it comes to fishing opportunity.
24 It would impact our Conservation Mission when
25 it comes to native trout species, but it

1 would impact opportunity for New Mexico's
2 angling community.

3 COMMISSIONER DOMINGUEZ: Okay. Thank
4 you, Mr. Roper.

5 That's all my questions.

6 HEARING OFFICER ORTH: Thank you.

7 Commissioner Frey, any questions?

8 COMMISSIONER FREY: No questions.

9 Thank you for your testimony.

10 HEARING OFFICER ORTH: Vice Chair.

11 VICE CHAIRPERSON ZEMLICK: No
12 questions. Thank you.

13 HEARING OFFICER ORTH: Mr. Chair.

14 COMMISSIONER THOMSON: I don't have
15 any questions either. Thank you.

16 HEARING OFFICER ORTH: Thank you.

17 Commissioner Patten.

18 COMMISSIONER PATTEN: Yes, thank you.

19 In full disclosure I know
20 Mr. Roper quite well. We routinely talk
21 about native trout conservation and fishing
22 and all of those things.

23 Also noteworthy is I've spent a
24 good chunk of my career working as a Rio
25 Grande Cutthroat Trout Biologist trying to,

1 on the first hand, conserve and work in many
2 of these streams, so I have a close
3 connection to these areas.

4
5 EXAMINATION

6 BY COMMISSIONER PATTEN:

7 Q. My question is related to the
8 conversation we had with Mr. Baca earlier in
9 the Rio Cebolla.

10 COMMISSIONER PATTEN: Madam Hearing
11 Officer, if I get out of line here, please
12 ring me in.

13 Q. It is related to potential limits on
14 the production of native trout at the Seven
15 Springs Fish Hatchery, which is currently
16 within the reach Designated by the
17 Environment Department for an ONRW status.

18 With the State Game Commission
19 Designation Upstream of the hatchery would
20 that still meet your support or still lead to
21 your support of that ONRW Designation for the
22 Rio Cebolla?

23 A. Mr. Chair, Commissioner Patten:

24 Just to make sure I follow the
25 question correctly, are you asking if the

1 segment was moved Upstream, so it is Upstream
2 of the Fish Hatchery entirely, would we be
3 supportive of that Designation?

4 Q. Correct.

5 A. The answer is yes, we would be
6 supportive.

7 Of course throughout this entire
8 process we have had an open ear to any
9 concerns that the Department might have from
10 a fisheries management perspective.

11 COMMISSIONER PATTEN: Great. Thank
12 you.

13 HEARING OFFICER ORTH: Okay. Thank
14 you.

15 Commissioner Brancard.

16 COMMISSIONER BRANCARD: No questions.

17 HEARING OFFICER ORTH: Okay.

18 Commissioner Velasquez.

19 COMMISSIONER VELASQUEZ: No questions.

20 HEARING OFFICER ORTH: Thank you.

21 Commissioner Vigil.

22 COMMISSIONER VIGIL: No questions.
23 Thank you.

24 HEARING OFFICER ORTH: All right.
25 We'll go to the platform:

1 Commissioner McWilliams.

2 COMMISSIONER McWILLIAMS: I have no
3 questions. Thank you.

4 HEARING OFFICER ORTH: Thank you.

5 Commissioner Paladugu.

6 COMMISSIONER PALADUGU: No questions
7 from me.

8 HEARING OFFICER ORTH: All right.
9 Thank you very much.

10 Any follow-up, Ms. Fox?

11 MS. FOX: No, Madam Hearing Officer.
12 Thank you.

13 HEARING OFFICER ORTH: Any reason not
14 to excuse Mr. Roper?

15 All right. We'll do that.

16 Thank you very much.

17 All right. Mr. Maxwell, would you
18 like to offer a statement?

19 MR. MAXWELL: Your Honor, I do not
20 have a statement today. Thank you for
21 asking.

22 HEARING OFFICER ORTH: All right.
23 Thank you.

24 Let's turn, then, to Public
25 Comment. This is Non-Technical Public

1 Comment.

2 Who is in the room?

3 Let's see; Ms. Trujillo was
4 waiting.

5 MS. TANYA TRUJILLO: I'm here.

6 HEARING OFFICER ORTH: There you are.
7 Okay. Terrific. I know you've been waiting,
8 so if you would come up.

9 State and spell your first and
10 last name, please.

11 MS. TANYA TRUJILLO: Thank you.

12 Hello. My name is Tanya Trujillo,
13 T-A-N-Y-A T-R-U-J-I-L-L-O.

14 HEARING OFFICER ORTH: Thank you.

15 Do you swear or affirm to tell the
16 truth?

17 MS. TANYA TRUJILLO: Yes.

18 HEARING OFFICER ORTH: All right.
19 Please go ahead.

20
21 MS. TANYA TRUJILLO,
22 after having been first duly sworn,
23 was examined and testified as follows:

24 MS. TANYA TRUJILLO: Thank you, Madam
25 Hearing Officer and Chairman Thomson:

1 First I would just like to commend
2 the Commission on selection of the Vice
3 Chair. I appreciate Commissioner Zemlick's
4 great experience and expertise in her work.

5 Good afternoon. My name is Tanya
6 Trujillo. I am the Deputy State Engineer,
7 but I am also the Governor's Water Policy
8 Advisor, and I am here in that capacity to
9 make Public Comment. The comment is in
10 support of the Designation.

11 As apparent in the Governor's
12 50-year Water Action Plan, water is a
13 critical resource that must be protected.
14 New Mexico's water resources continue to face
15 threats of Climate Change, contributing to
16 limited and decreasing water supplies for
17 local governments, cultures, economies,
18 agriculture, wildlife, and outdoor recreation
19 activities.

20 The strength and beauty of an ONRW
21 is that it is afforded the highest protection
22 of Water Quality under the State's policies.
23 It does not prevent discharges from
24 occurring, but it does require scrutiny in
25 order to protect the ONRW.

1 The Waters that the New Mexico
2 Environment Department has Nominated as ONRWs
3 are all Waters that are significant to areas
4 with State or Federal Special Designations
5 such as State Special Trout Waters, National
6 or State Parks, Monuments, Wildlife Refuges,
7 Wilderness Areas, or they are part of a
8 National Wild and Scenic River.

9 The ONRWs that the New Mexico
10 Environment Department proposes today will
11 further the goals of the Governor's
12 "Executive Order 2021-52: Protecting New
13 Mexico's Lands, Watersheds, Wildlife, and
14 Natural Heritage," by helping to conserve,
15 protect, and enhance New Mexico's natural
16 environment and prevent Degradation and
17 surface and groundwater quality issues across
18 Watersheds.

19 Thank you very much. I appreciate
20 the opportunity to be here today.

21 HEARING OFFICER ORTH: Thank you very
22 much, Ms. Trujillo.

23 Who else? I think I saw a hand
24 over here.

25 Oh, okay; a couple of hands.

1 I know the 2 gentleman in the back
2 have been here the longest. If you would
3 come up one at a time, please.

4 We will also accept Public Comment
5 from the platform in just a few moments.

6 If you would state and spell your
7 first and last name, please, sir.

8 MAYOR TELESFOR BENAVIDEZ: My name is
9 Telesfor Benavidez, T-E-L-E-S-F-O-R
10 B-E-N-A-V-I-D-E-Z.

11 HEARING OFFICER ORTH: Thank you.

12 Do you swear or affirm to tell the
13 truth?

14 MAYOR TELESFOR BENAVIDEZ: Yes, Madam
15 Hearing Officer.

16
17 MAYOR TELESFOR BENAVIDEZ,
18 after having been first duly sworn,
19 was examined and testified as follows:

20
21 MAYOR TELESFOR BENAVIDEZ: Mr. Chair
22 and Commissioners:

23 Good morning. Thank you for
24 allowing me to speak on behalf of the Village
25 of Pecos. My name is Telesfor Benavidez, and

1 have been the Mayor for the past 7 years.

2 I would like to thank the Water
3 Quality Control Commission for your
4 commitment to protect our water in the Pecos
5 region and New Mexico.

6 As you are aware, the Village of
7 Pecos was one of the original Petitioners to
8 protect the Upper Pecos Watershed Tererro
9 Mines. Today's proposal was stretched
10 through the Pecos National Historical Park,
11 which is approximately 1.5 miles from the
12 Village of Pecos Watershed Treatment Plant.

13 Although we are supportive and
14 understanding of the national resource waters
15 and protections along the Pecos National
16 Historical Park, the Village of Pecos is
17 concerned how this Petition will affect
18 expansion of the Village and the region.

19 Throughout the region there are a
20 couple thousand septic tanks that may be
21 contaminating our existing surface and
22 groundwater. The Village is currently
23 working with our neighbors in the
24 unincorporated areas to take systems off
25 septic tanks and hook them up to the Village

1 Wastewater Treatment Plant. This effort is
2 essential to protect the Waters for future
3 generations.

4 We believe that this Petition
5 could potentially hamper our efforts and tie
6 our hands to address future growth, and
7 address environmental standards and concerns
8 for our communities. For these reasons we
9 respectfully request that further
10 consultations be held in the region and
11 communities to better assess the long-term
12 efforts we have for the Village of Pecos and
13 the region.

14 The East Pecos community, which is
15 not part of the Incorporated Municipality of
16 the Village of Pecos, has for the past 14
17 years striven to build a sanitary sewer
18 system to connect to the Village of Pecos
19 Wastewater Treatment Plant. There exists an
20 exempt contract agreement between the Village
21 and the East Pecos Municipal Domestic Water
22 Consumer Association to achieve this.

23 It is critical that this project
24 be complete as soon as possible, as there
25 exists the potential of wastewater from

1 exiting septic tanks, and in some cases open
2 sewer pits now being used by the East Pecos
3 community polluting the drinking water and
4 the Pecos River. Not only does this pose a
5 severe risk to the public health and safety
6 of the citizens, but to communities south of
7 the River that depend heavily on River water
8 for agriculture.

9 The reason this project has been
10 delayed over the years is the Association's
11 inability to acquire adequate funding.
12 However, the Association has already made a
13 significant monetary investment on the
14 project.

15 The Village of Pecos Wastewater
16 Treatment Plant is currently operating at 30%
17 of activity. It is estimated, when hooking
18 up the East Pecos sewer system, the capacity
19 will not exceed 70%.

20 The plant is engineered to
21 effectively operate at 86% capacity. The
22 Association has been assured that hooking up
23 East Pecos to the Village Wastewater
24 Treatment Plant will have a minimal impact.

25 The Village of Pecos got a \$6

1 million sewer plant built in 2009. In my
2 first year as Mayor, we were not in
3 compliance with some of the rules from the
4 existing sewer plant, so the Village acquired
5 over \$1 million to remove 2 of the ponds that
6 were left behind. The water was taken out
7 and the sludge was removed, and the liners
8 were removed.

9 The problem is those were built on
10 top of a spring Anojito, so what we have left
11 to do at the sewer plant is to take the dikes
12 down. The State has given us permission and
13 some time to remove those here hopefully by
14 the spring, and just put the dikes down and
15 finish the project.

16 The Village of Pecos takes 2
17 samples a month, and we test for BOD, TSS,
18 and E. coli. The "BOD" is the Biochemical
19 Oxygen Demand, and Total Suspended Solids.
20 We have not had any bad samples taken.

21 The Village is also looking into
22 acquiring money for a holding tank, so that
23 the gray water that is distributed
24 automatically into the Pecos River can be
25 stored and sold for roads and other things

1 that are needed in and around the community.

2 I would like to thank you again
3 for your time.

4 HEARING OFFICER ORTH: Thank you,
5 Mr. Mayor.

6 MR. RALPH VIGIL: Good morning, Madam
7 Hearing Officer and Mr. Chair, and members of
8 the Commission:

9 My name is Ralph Vigil, R-A-L-P-H
10 V-I-G-I-L.

11 HEARING OFFICER ORTH: Do you swear or
12 affirm to tell the truth?

13 MR. RALPH VIGIL: Yes, I do.

14 HEARING OFFICER ORTH: Thank you. Go
15 ahead.

16
17 MR. RALPH VIGIL,
18 after having been first duly sworn,
19 was examined and testified as follows:

20
21 MR. RALPH VIGIL: I am a resident of
22 Pecos. I am also a former Chairman of the
23 New Mexico Acequia Commission and a fifth
24 generation acequia parciento and farmer in
25 Pecos around Cerro de Escobas and Pecos.

1 We established our acequia in the
2 mid 1800s. Water Quality is extremely
3 important to us.

4 We are at the Headwaters of the
5 Pecos, and we honor and pride ourselves in
6 being the stewards of those Headwaters, and
7 being able to pass good water down to our
8 neighbors to the south.

9 There has been contaminants that
10 have degraded our water in the past from mine
11 spills from the old Tererro Mine. There
12 still remains the threat of mining in the
13 future that could contaminate our river.

14 We see that the Pecos River is a
15 very crucial river to this State, being the
16 largest river in the State that actually
17 originates here, and we need to protect it.

18 Although I do share those same
19 concerns in that I am a resident of East
20 Pecos and a Mutual Domestic member in East
21 Pecos, I do share the concern of our septic
22 systems and old outdated cesspools that may
23 still be degrading in the area and may be
24 potentially contaminating our water.

25 The stretch through the National

1 Historical Park, you know, there are some
2 concerns on what impact that could have on
3 the Village's capacity, but overall I feel
4 that this State and this Commission has done
5 a good job in leading the nation by taking
6 matters into its own hands, and protecting
7 our waters, and coming together as a State,
8 bringing different stakeholders together to
9 discuss these difficult decisions and topics,
10 because I know that the economics and so many
11 different factors are involved.

12 The overall feeling is that we do
13 need to protect our Waters from future
14 contamination. It is our responsibility to
15 future generations, as I am a Father and a
16 Grandfather. I do wish to pass on a legacy
17 of clean water to my Grandkids and their
18 Grandkids as well, so that they can continue
19 to irrigate out of those acequias and provide
20 clean water to our community.

21 Without that clean water it would
22 hamper and basically kill our ability to
23 continue, because I would not want to be
24 irrigating with contaminated water or
25 spreading contaminated water throughout the

1 valley.

2 With that, you know, I just want
3 to thank you for all your work and your
4 service on this Commission in helping to
5 maintain New Mexico's Water Quality.

6 Again, I just hope that we, as a
7 State, continue to move forward in this ONRW
8 work. I do still have those concerns of
9 just, you know, that stretch in the Pecos. I
10 do, however, agree with all the other
11 stretches that are up for protection today.
12 Thank you.

13 HEARING OFFICER ORTH: Thank you very
14 much, Mr. Vigil.

15 I think I saw another hand in the
16 blue shirt, sir. We will then move to the
17 platform for 3 comments.

18 State and spell your first and
19 last name.

20 MR. BRUCE SCOTT: I'm Bruce Scott,
21 B-R-U-C-E S-C-O-T-T.

22 HEARING OFFICER ORTH: Do you swear or
23 affirm to tell the truth?

24 MR. BRUCE SCOTT: I do.

25 HEARING OFFICER ORTH: Thank you. Go

1 ahead.

2
3 MR. BRUCE SCOTT,
4 after having been first duly sworn,
5 was examined and testified as follows:
6

7 MR. BRUCE SCOTT: Thank you,
8 Commissioners, for this opportunity to speak
9 in support of the Nomination of these 46
10 incredible Waters of New Mexico. I speak as
11 a member of Trout Unlimited and as a Board
12 Member for the Truchas Chapter, representing
13 400 TU members in this area.

14 I belong to Trout Unlimited not
15 because I love trout as much as I love where
16 trout live. Our Mission is to conserve,
17 protect, and restore fisheries and their
18 Watersheds.

19 One of the reasons that my wife
20 and I came to New Mexico, and one of the
21 reasons we love New Mexico is that this is a
22 place where we use both our minds and our
23 hearts to make decisions about our State and
24 our future.

25 I respect the incredible work of

1 this Petition, and respect what this
2 Commission does, so I won't talk about
3 details, but just talk about heart a little
4 bit:

5 I'm here simply to say that these
6 Waters are indeed outstanding and deserving.
7 I have walked in them; the Chama, Rio de los
8 Pinos, the Red River and the Pecos, and one
9 of the original Designated Waters, the Rio
10 Santa Barbara.

11 I've stood reverently in them.
12 I've watched them. I have felt them flow in
13 all 4 seasons. I've listened to their
14 rumbling and their giggling, and every time
15 renewed my sense of awe in the life of our
16 planet. On occasion I've even connected to a
17 gorgeous trout. Honestly my iPhone is filled
18 with as many pictures of the water and the
19 habitat as there are pictures of trout.

20 Catching fish is really incidental
21 to why I'm an angler. I go to the river to
22 connect to the life of the river, to feel the
23 cold stream, see the bugs and the
24 invertebrates, and mammals and fowl, and
25 again occasionally fish the fish that these

1 rivers support, to actually feel the life
2 that is sustained here.

3 These rivers feed our souls. They
4 give us life, give us beauty, and give us a
5 sense of awe. Please protect them with this
6 Designation.

7 With our bodies comprised mostly
8 of water, and the requirements our bodies
9 have for water to stay alive, it is
10 incredible that we must "Designate" and
11 "regulate" in order to keep these streams
12 alive, but we as humans have proven our
13 disregard and disloyalty over and over again.
14 I urge you to use this mechanism to protect
15 what keeps our outstanding Waters
16 outstanding.

17 Thank you for your good work and
18 allowing us to speak.

19 HEARING OFFICER ORTH: Thank you,
20 Mr. Scott.

21 We will now go to the platform for
22 3 comments.

23 Brittany Fallon or Brittany
24 Fallon.

25 MS. BRITTANY FALLON: My name is

1 Brittany Fallon with Western Resource
2 Advocates.

3 HEARING OFFICER ORTH: All right.

4 Do you swear or affirm to tell the
5 truth?

6 MS. BRITTANY FALLON: Yes.

7 HEARING OFFICER ORTH: All right.

8 I can see the spelling of your
9 name; B-R-I-T-T-A-N-Y F-A-L-L-O-N.

10 MS. BRITTANY FALLON: That's correct.

11 HEARING OFFICER ORTH: All right. Go
12 ahead.

13 MS. BRITTANY FALLON: Thank you.

14
15 MS. BRITTANY FALLON,
16 after having been first duly sworn,
17 was examined and testified as follows:

18
19 MS. BRITTANY FALLON: Western Resource
20 Advocates supports this ONRW Nomination
21 because of the immense benefits that it
22 offers to New Mexicans, our Watersheds, and
23 the wildlife.

24 I like to say that here in New
25 Mexico we're often so concerned about whether

1 there is any water, but sometimes we forget
2 the importance of ensuring that the water
3 that we do have is of high quality. This
4 Petition adds new protections and layers of
5 additional protections to Waters that have
6 sustained the communities and ecosystem,
7 bringing New Mexicans who love to fish, and
8 ensures that these pristine Waters are
9 preserved and protected for future
10 generations.

11 We thank the Department for their
12 hard work in this Petition, and we ask the
13 Commission to support these Designations.
14 Thank you.

15 HEARING OFFICER ORTH: Thank you,
16 Ms. Fallon.

17 Nick Streit or "Streit."

18 MR. NICKOLAS STREIT: Yes, that's
19 correct.

20 Hello. My name is Nick Streit,
21 N-I-C-K S-T-R-E-I-T.

22 HEARING OFFICER ORTH: Do you swear or
23 affirm to tell the truth?

24 MR. NICK STREIT: I do.

25 HEARING OFFICER ORTH: Thank you. Go

1 ahead.

2
3 MR. NICHOLAS STREIT,
4 after having been first duly sworn,
5 was examined and testified as follows:
6

7 MR. NICHOLAS STREIT: Thank you,
8 Commissioners. I would just like to add some
9 comments in support of protecting these
10 Waters as ONRWs:

11 I have had a fly fishing business
12 in New Mexico my entire life. My Dad
13 actually started the business back in 1980.
14 Unfortunately we've seen the effects
15 firsthand of what degraded Water Quality can
16 do to our business back in the '80s in
17 particular with the Red River and the
18 molybdenum mine there. The Degradation of
19 that River was one of the contributing
20 factors of my Dad actually having to close
21 down the business in 1987.

22 Luckily that River is in better
23 shape now. We have reopened the business and
24 things are going well, but we've seen threats
25 more recently in some of these rivers like



1 the Rio Chama. You know, dam repair and
2 restoration on both the El Vado and Abiquiú
3 Dams has led to flows going to 0 CFS for
4 periods of time on those Rivers, which
5 negatively impacts trout fishing. Of course
6 we have threats on all of these rivers.

7 I just wanted to add my support
8 for these Designations. We rely on clean
9 water for our business.

10 I also want to thank you for the
11 work of the Game Commission and Commissioner
12 Patten for, you know, understanding that
13 these Waters are special, and hence
14 Designating them as Special Trout Waters. I
15 think that these Designations of ONRW just go
16 alongside that work and the importance of
17 these Waters. Thank you.

18 HEARING OFFICER ORTH: Thank you,
19 Mr. Streit.

20 Rachel Ellis on the platform.

21 Rachel Ellis.

22 MS. RACHEL ELLIS: Yes; can you all
23 hear me?

24 HEARING OFFICER ORTH: Yes.

25 Would you state and spell your

1 first and last name.

2 MS. RACHEL ELLIS: Yes. My name is
3 Rachel Ellis, R-A-C-H-E-L E-L-L-I-S.

4 HEARING OFFICER ORTH: Do you swear or
5 affirm to tell the truth?

6 MS. RACHEL ELLIS: Yes, I do.

7 HEARING OFFICER ORTH: Thank you, go
8 ahead.

9
10 MS. RACHEL ELLIS,
11 after having been first duly sworn,
12 was examined and testified as follows:

13
14 MS. RACHEL ELLIS: Thank you to the
15 Commission for this opportunity to provide
16 comments:

17 Again, my name is Rachel Ellis. I
18 represent the Southwest River Protection
19 Program of American Rivers, which is a
20 national conservation organization dedicated
21 to protecting and restoring our country's
22 most important rivers.

23 I was also born and raised in
24 Northern New Mexico, and I can personally
25 attest to the value of many of these

1 Nominated reaches, with the reaches along the
2 Rio Chama being some of my favorites.

3 For my comment I would like to
4 highlight, in essentially a summary fashion,
5 the incredibly widespread and diverse support
6 that exists for NMED's Petition:

7 Earlier this year, when NMED
8 released their Draft Petition for Comment
9 they received 709 supportive Comments. There
10 were actually requests to expand the scope of
11 the Petition to include more reaches.

12 There was only one substantive
13 concern raised at that stage, which was from
14 the Department of Game and Fish. As we
15 already heard today, NMED worked with them
16 and those concerns have been alleviated.

17 Then for this Comment period with
18 the WQCC, there have been 836 comments to the
19 Commission in support of the Petition, and
20 this is inclusive of the Governor and her
21 Administration's support. That comes to a
22 total of 1,545 supportive Comments.

23 Besides the one Comment we just
24 heard about the one segment in the Pecos
25 National Historic Park below the Village of

1 Pecos, I am not aware of any Comments in
2 opposition beyond that.

3 Such overwhelming and near
4 unanimous support reflects that our State
5 really values clean water protection, and
6 that we understand clean water is critical to
7 the State's agriculture, wildlife, and
8 outdoor recreation economy. In light of that
9 degree of community support, I encourage the
10 Commission to approve the Petition in its
11 entirety. Thank you.

12 HEARING OFFICER ORTH: Thank you,
13 Ms. Ellis.

14 Garrett Veneklasen.

15 MR. GARRETT VENEKLASEN: Good morning.
16 Garrett Veneklasen, G-A-R-R-E-T-T V as in
17 Victor, E-N-E-K-L-A-S-E-N. I'm with New
18 Mexico Wild.

19 HEARING OFFICER ORTH: Do you swear or
20 affirm to tell the truth?

21 MR. GARRETT VENEKLASEN: I do.

22 HEARING OFFICER ORTH: Go ahead.

23 ///

24 ///

25 ///

1 MR. GARRETT VENEKLASEN,
2 after having been first duly sworn,
3 was examined and testified as follows:
4

5 MR. GARRETT VENEKLASEN: Good
6 afternoon, Mr. Chair and Commissioners:
7 Garrett Veneklasen, born and
8 raised in New Mexico. I live on the Rio Don
9 Fernando River here in Taos.

10 Obviously clean water is so
11 critical for all of us. I'm an angler and
12 outdoorsman, and so many of our members, our
13 thousands of members statewide spend so much
14 time in and around rivers, bird watching,
15 rafting, fishing, and hiking. Outdoor
16 recreation is a massive sustainable economic
17 driver for the State. We and our members
18 enthusiastically encourage you all to please
19 support this Petition and these stream
20 segments that are listed in that document.
21 Thank you very much.

22 HEARING OFFICER ORTH: Thank you,
23 Mr. Veneklasen.

24 Harris Klein.

25 If you're speaking, Mr. Klein, we

1 can't hear you.

2 CHAIRMAN THOMSON: You're muted.

3 HEARING OFFICER ORTH: We cannot hear
4 you.

5 Can you send over a request to
6 unmute himself? He may be able to see that.

7 You're still muted.

8 All right. One possibility,
9 Mr. Klein, is you could put some form of
10 comment in the Chat and we can read it into
11 the record, or you can send a quick e-mail to
12 Pam Jones, and it will be included that way.

13 Let me ask if there is anyone else
14 on the platform who has not spoken yet and
15 would like to offer Non-Technical Public
16 Comment.

17 No.

18 All right. Anyone else in the
19 room?

20 Yes. Come on up, please.

21 MS. CATHERINE LOUISELL: I think this
22 is on.

23 HEARING OFFICER ORTH: Yes.

24 If you would state and spell your
25 first and last name.

1 MS. CATHERINE LOUISELL: Good morning,
2 Chair and Commissioners. My name is
3 Catherine Louisell. That's CATHERINE, last
4 name L-O-U-I-S for Sam, E-L-L.

5 HEARING OFFICER ORTH: Do you swear or
6 affirm to tell the truth?

7 MS. CATHERINE LOUISELL: Yes.

8 HEARING OFFICER ORTH: Thank you. Go
9 ahead.

10
11 MS. CATHERINE LOUISELL,
12 after having been first duly sworn,
13 was examined and testified as follows:
14

15 MS. CATHERINE LOUISELL: I live in
16 Ilfeld, New Mexico. I walk the Pecos River
17 often. We were incredibly impacted with the
18 Calf Canyon/Hermits Peak Fire. I'm the
19 former President of the Ilfeld Mutual
20 Domestic Water Association.

21 I highly support this ONRW
22 Designation. The concern for our water is
23 high.

24 We have currently 2 failing wells
25 in our area. I just feel strongly that

1 clean, clear, healthy water is important for
2 our area and for the State. I would hate,
3 after the fires and the water ran black, for
4 our water to not be healthy for our citizens
5 and the wildlife that depends on it.

6 That's what I'm concerned about.

7 Thank you.

8 HEARING OFFICER ORTH: Thank you,
9 Ms. Louisell.

10 Would anyone else in the room like
11 to offer Non-Technical Comment?

12 Sir, state and spell your name,
13 please.

14 MR. DAVID WHEELOCK: My name is David
15 Wheelock, D-A-V-I-D W-H-E-E-L-O-C-K.

16 HEARING OFFICER ORTH: Thank you.

17 Do you swear or affirm to tell the
18 truth?

19 MR. DAVID WHEELOCK: I do.

20 HEARING OFFICER ORTH: Go ahead,
21 please.

22
23 MR. DAVID C. WHEELOCK,
24 after having been first duly sworn,
25 was examined and testified as follows:

1 MR. DAVID WHEELLOCK: I am part of the
2 fishing gang here. I'm a member of Trout
3 Unlimited and American Rivers and what have
4 you.

5 I only have 2 short things to say
6 in addition to agreeing with all the
7 advocates for this measure:

8 When I was a young lad in the
9 early 1960s, I remember my family lived in
10 the Midwest at the time. I well remember
11 visiting Idaho and Montana. The fact I'd
12 like to point out and let people reflect on
13 is that when we were fishing there, if you
14 got thirsty, you didn't need a water bottle,
15 you could drink right out of the streams. I
16 think that's something to ponder.

17 The other thing I think is worth
18 reflecting on is many of us in the
19 fishing community, or of course all of us in
20 the fishing community are very intimately
21 familiar with these places that we're talking
22 about. Someone else said, and I think it was
23 Mr. Scott that said it's not the fish that
24 he's mostly in love with, it's the places
25 where the fish live.

1 Many people in our country and the
2 world have never visited these places. In
3 fact from having been there, and spending a
4 lot of my life there, I would say the great
5 majority of people have never visited these
6 places.

7 I urge you, if you are one of
8 these people, to visit one of these places.
9 I could recommend the Rio Santa Barbara; not
10 very far from Santa Fe or Taos. Go there and
11 you will have a new appreciation for this
12 whole project. Thank you.

13 HEARING OFFICER ORTH: Thank you,
14 Mr. Wheelock.

15 Mr. Klein, were you able to unmute
16 yourself?

17 MR. HARRIS KLEIN: Well, we're trying.

18 HEARING OFFICER ORTH: All right. I
19 can hear you.

20 MR. HARRIS KLEIN: Good. Thank you.

21 HEARING OFFICER ORTH: If you would
22 spell your first and last name, please.

23 MR. HARRIS KLEIN: The name is Harris,
24 H-A-R-R-I-S, Klein, K-L-E-I-N.

25 HEARING OFFICER ORTH: Do you swear or

1 affirm to tell the truth?

2 MR. HARRIS KLEIN: I do.

3 HEARING OFFICER ORTH: Go ahead.

4
5 MR. HARRIS KLEIN,
6 after having been first duly sworn,
7 was examined and testified as follows:
8

9 MR. HARRIS KLEIN: Okay. I'm the past
10 Presidents of the Well State chapter of Trout
11 Unlimited in Albuquerque, and also the past
12 Chair of New Mexico Trout Unlimited Council.

13 In New Mexico we have 4 chapters
14 of Trout Unlimited from Taos to Las Cruces
15 with 1200 members. We, at Trout Unlimited,
16 work to protect trout and wildlife habitat.

17 Many of rivers and streams
18 Nominated in this Petition are managed as
19 Special Trout Waters by the New Mexico
20 Department of Game and Fish. These Waters
21 also represent some of the best trout fishing
22 streams in the State, while also providing
23 important refuge for native fish species and
24 other wildlife.

25 These streams also support local

1 economies and communities. These Waters draw
2 locals and visitors from all over the State
3 and the world to hike, camp, bike, hunt,
4 fish, and enjoy the outdoors. This
5 recreational activity, in turn, helps fuel
6 the State's booming outdoor recreation
7 economy and sustain local businesses,
8 restaurants, hotels, and retail shops.

9 For protecting the environment and
10 combatting Climate Change, ONRW Designation
11 is an important tool to protect the Water
12 Quality in response to the recent Supreme
13 Court Sackett decision that stripped
14 protections from about 95% of New Mexico's
15 streams.

16 Of importance to the Albuquerque
17 area, the Cebolla and the Guadalupe are 2 of
18 those streams that lost protection that are
19 important to the anglers in this area. Trout
20 Unlimited is working with NGOs to help clean
21 these waterways with annual cleanups, as well
22 as installing Beaver Dam Catalogs to raise
23 the water Table.

24 We also do temperature monitoring
25 and Water Quality testing in the Jemez

1 region.

2 The Upper Rio Cebolla is the
3 historical Rio Grande Cutthroat habitat, and
4 maintaining Water Quality is key to keeping
5 our native fish populations healthy.

6 Trout Unlimited, throughout the
7 State, has partnered with Amigos Bravos in
8 doing the Water Quality testing from the San
9 Juan to the east fork of the Jemez and San
10 Antonio Creeks.

11 I urge the Department to include
12 the Rio Guadalupe and the Rio Cebolla when
13 deciding which Waters to include for ONRW
14 Designation.

15 Thank you so much for allowing me
16 to speak.

17 HEARING OFFICER ORTH: Thank you,
18 Mr. Klein.

19 Is there anyone else in the room
20 who would like to offer Non-Technical Public
21 Comment?

22 Yes, ma'am.

23 State and spell your first and
24 last name, please.

25 MS. SABRINA STAIRES: My name is

1 Sabrina Staires. That's spelled
2 S-A-B-R-I-N-A S-T-A-I-R-E-S.

3 HEARING OFFICER ORTH: Did you swear
4 or affirm to tell the truth?

5 MS. SABRINA STAIRES: Yes, I do.

6 HEARING OFFICER ORTH: Go ahead.

7
8 MS. SABRINA STAIRES,
9 after having been first duly sworn,
10 was examined and testified as follows:

11
12 MS. SABRINA STAIRES: I am part of the
13 Tesuque Environmental Watch, and I have
14 really been studying the State Water Quality.
15 After living here for 3 years, it's super-
16 vulnerable because we don't have our own
17 Standards at the State level.

18 I am from Oklahoma, and my Father
19 was an Environmental Scientist and helped to
20 establish water and air quality standards for
21 that state in 1973.

22 This State has so much wildlife
23 and so much beauty, and we all value it.
24 These ONRWS right now are really important as
25 an extra layer of protection until we can



1 establish higher quality standards for the
2 State. I mean it's really important.

3 Another thing that's really
4 important is to protect the water in general
5 because so many people are on well water and
6 septic. We can't keep adding to the load.
7 We can't let what happened in many other
8 states that are pretty sick in their Water
9 Quality vein, we can't let that happen here;
10 this is a very special place.

11 I really support this Nomination
12 and the hard work that goes into these
13 Nominations by groups like Amigos Bravos.
14 They are an incredible asset to this State.
15 Thank you.

16 HEARING OFFICER ORTH: Okay.

17 Thank you. Anyone else in the
18 room?

19 Come on up.

20 MS. LINDA WYLIE: My name is Linda
21 Wylie. That's L-I-N-D-A W-Y-L-I-E.

22 HEARING OFFICER ORTH: Do you swear or
23 affirm to tell the truth?

24 THE WITNESS: I do.

25 HEARING OFFICER ORTH: Go ahead,

1 please.

2
3 MS. LINDA WYLIE,
4 after having been first duly sworn,
5 was examined and testified as follows:
6

7 MS. LINDA WYLIE: I live in the
8 Village of Ilfeld in the Pecos River Retreat
9 Subdivision; I think it's an unincorporated
10 subdivision. I'm on the Board of Directors
11 of a nonprofit organization called Pecos
12 River Open Spaces.

13 Twenty years ago a group of
14 landowners in the subdivision contributed
15 funds to buy open land in the Pecos River
16 Canyon that runs adjacent to this subdivision
17 of 167 lots. We dedicated this land to
18 public use of the participants in our area
19 between South San Ysidro and San José.

20 We now have 220 acres under a Land
21 Conservation Easement managed by Pecos River
22 Open Spaces and Santa Fe Conservation Trust,
23 and we have a small L.L.C. of 18 acres along
24 the Pecos River for a Swimming Hole Trust.
25 That Swimming Hole Trust is where the



1 families who live on this 167 lots in the
2 Pecos River Open Spaces -- I mean Pecos River
3 Retreat comes to recreate.

4 You know, we've maintained that
5 access for families. It is free of charge.
6 I have started to notice, since 1983 when I
7 purchased my land along the river there, that
8 the cleanup efforts and remediation efforts
9 from the Tererro Mine, we noticed that there
10 was dead fish floating down the river from
11 that remediation. That's gone.

12 When the City of Pecos improved
13 its Water Quality by installing a new Septic
14 Treatment Plant, we've noticed now that the
15 green foam that used to be kind of a
16 characteristic of the river in the summer
17 when the water warmed up, that's gone.

18 I want to say as a private person
19 and member of this nonprofit organization and
20 a landholder in the swimming hole L.L.C., the
21 families along the river from Pecos all the
22 way to the Villanueva, you know we all
23 recreate, fish, swim, our children, our
24 Grandchildren, and we've done it for
25 generations.

1 I really appreciate that you are
2 considering how important the Headwaters in
3 the Pecos are not just for outside State
4 recreaters, but for all the people who live
5 along that river and who have a historical
6 family connection to those clean waters.

7 Thank you so much for considering
8 this. I think these Designations are really
9 important for average people. Thank you.

10 HEARING OFFICER ORTH: Thank you,
11 Ms. Wylie.

12 Anyone else in the room?

13 No.

14 Anyone else on the platform?

15 No.

16 All right. I don't think there is
17 any reason not to close the evidentiary
18 record at this time. We can turn it over to
19 the Commission for deliberations.

20 Ms. Weatherly, do you need to make
21 a Closing Statement? I feel like you made
22 your request in your Opening Statement.

23 MS. WEATHERLY: Madam Hearing Officer,
24 I did, and I have no Closing Statement.

25 HEARING OFFICER ORTH: All right.

1 Thank you.

2 Nothing else from anyone?

3 Terrific.

4 Well, thank you all very much for
5 participating.

6 Mr. Chair, the evidentiary record
7 is now closed and you can take it from here.

8 CHAIRMAN THOMSON: Thank you to all
9 the parties that provided testimony and for
10 all the public that provided support.

11 At this point we have a Proposal
12 before us. I guess my first question is
13 whether the Commission is ready to take
14 action on this Proposal now, or do we want to
15 conduct further deliberation away from
16 everyone in the room, or do we want to delay
17 the decision?

18 Commissioner Brancard.

19 COMMISSIONER BRANCARD: Mr. Chairman,
20 I think we're 98% on this Proposal, but there
21 seems to be 2 outstanding areas here: One is
22 the Game and Fish concerns about the Cebolla
23 and the segment from up to where the fish
24 hatchery is.

25 COMMISSIONER PATTEN: Just for clarity

1 it is the Day Use Area on Forest Service land
2 where the Special Trout Water Designation
3 would be used.

4 COMMISSIONER BRANCARD: It is just
5 above the fish hatchery.

6 COMMISSIONER PATTEN: A little ways,
7 yes, about a mile.

8 COMMISSIONER BRANCARD: The second is
9 some of the concerns of the public about the
10 Pecos River through the National Park and
11 whether that would have any impact on the
12 Village of Pecos' expansion of its Water
13 Treatment Plant.

14 I don't know whether it's worth it
15 for us to try to hash that out or to give the
16 Environment Department maybe a little more
17 time to talk to these parties and see whether
18 they can ameliorate their concerns or maybe
19 slightly revise their Proposal.

20 I'm just sort of throwing that out
21 as a possibility here.

22 CHAIRMAN THOMSON: Yes.
23 Ms. Weatherly.

24 MS. WEATHERLY: Yes, I apologize.

25 Can you please repeat the

1 question?

2 COMMISSIONER BRANCARD: I guess the
3 question, Ms. Weatherly, if I may be so bold,
4 is whether the Environment Department would
5 appreciate a little more time to work with
6 the Game and Fish Department and with
7 representatives of the Village of Pecos about
8 their concerns, and maybe, depending on those
9 discussions, modify your Proposal to the
10 Commission.

11 I'm not talking about a lot of
12 time here. I don't see more than a few weeks
13 or a month to work this out or not work it
14 out; I don't know.

15 MS. WEATHERLY: If I can take a moment
16 to confer with my clients.

17 CHAIRMAN THOMSON: Please.

18 (Ms. Weatherly confers with New
19 Mexico Environment Department
20 Representatives.)

21 CHAIRMAN THOMSON: Ms. Weatherly,
22 would now be a good time to break for lunch
23 and give you guys an opportunity to discuss
24 this?

25 MS. WEATHERLY: Chair Thomson, I think

1 that is a wonderful idea, yes.

2 CHAIRMAN THOMSON: We'll do that.

3 We will reconvene at 1:30. We'll
4 give the Environment Department an
5 opportunity to talk about how they might
6 proceed with the concerns, and perhaps Game
7 and Fish will meet with them as well.

8 MS. WEATHERLY: Thank you.

9 CHAIRMAN THOMSON: Okay. We're
10 adjourned.

11 (The Water Quality Control
12 Commission Hearing recessed from 12:27 p.m.
13 to 1:46 p.m.)

14 HEARING OFFICER ORTH: Good afternoon.

15 We are back after a lunch break
16 that was a little bit longer than originally
17 advertised based on our experience in the
18 coffee shop downstairs. I'm sorry there
19 wasn't an earlier announcement that it would
20 be an extended break.

21 Ms. Weatherly, I understand that
22 you have a statement or a request of the
23 Commission.

24 MS. WEATHERLY: Thank you, Madam
25 Hearing Officer.

1 Chair Thomson and members of the
2 Commission:

3 NMED would like to move to reopen
4 the record in this matter.

5 HEARING OFFICER ORTH: There is a
6 request pending by the Petitioner to reopen
7 the record.

8 Mr. Chair, I believe you will need
9 a motion and a second, and a vote.

10 CHAIRMAN THOMSON: I would entertain a
11 Motion to Reopen the Hearing.

12 COMMISSIONER FREY: So moved.

13 COMMISSIONER BRANCARD: Second.

14 CHAIRMAN THOMSON: Discussion.

15 Are you ready to vote?

16 Ms. Jones, call the roll, please.

17 MS. JONES: Commissioner Brancard, how
18 do you vote?

19 COMMISSIONER BRANCARD: Yes.

20 MS. JONES: Commissioner Dominguez.

21 COMMISSIONER DOMINGUEZ: Sure.

22 COMMISSIONER FREY: Yes.

23 MS. JONES: Commissioner Frey, did I
24 hear your vote?

25 COMMISSIONER FREY: Yes.

1 MS. JONES: Commissioner Gilliam.

2 COMMISSIONER GILLIAM: Yes.

3 MS. JONES: Commissioner McWilliams.

4 COMMISSIONER McWILLIAMS: Yes.

5 MS. JONES: Thank you.

6 Commissioner Paladugu.

7 COMMISSIONER PALADUGU: Yes.

8 HEARING OFFICER ORTH: Commissioner
9 Patten.

10 COMMISSIONER PATTEN: Yes.

11 MS. JONES: Chairman Thomson.

12 CHAIRMAN THOMSON: Yes.

13 MS. JONES: Commissioner Velasquez
14 left at 12:30.

15 Commissioner Vigil.

16 COMMISSIONER VIGIL: Yes.

17 MS. JONES: Vice Chair Zemlick.

18 VICE CHAIRPERSON ZEMLICK: Yes.

19 MS. JONES: All right. The motion has
20 passed.

21 HEARING OFFICER ORTH: I understand,
22 Ms. Weatherly, that the purpose of reopening
23 the record is to address the comments made
24 about things that might be able to be worked
25 out, or the 2 matters.

1 MS. WEATHERLY: Madam Hearing Officer,
2 that is correct. I would like to call Shelly
3 Lemon to provide further information.

4 HEARING OFFICER ORTH: Thank you.

5 Ms. Lemon, you're still under
6 oath.

7 MS. WEATHERLY: Thank you, Madam
8 Hearing Officer.

9
10 MS. SHELLEY LEMON,
11 after having been previously sworn,
12 was examined and testified as follows:
13

14 MS. SHELLEY LEMON: Mr. Chair, and
15 Commissioners:

16 We discussed over the lunch break
17 Commissioner Patten's concern about the Rio
18 Cebolla. We are proposing to strike the NMAC
19 Proposal and replace it with the language
20 from the Special Trout Waters to match. We
21 would strike:

22 "Rio Cebolla from Calaveras
23 Creek to its Headwaters" [and
24 replace that with] "Rio Cebolla
25 from Seven Springs Day Use Area

Upstream to its Headwaters."

The second area concerning the Pecos Wastewater Treatment Plant, we talked about this issue with the Mayor of Pecos. Currently the Designation will not impact the Wastewater Treatment Plant or its permit conditions.

Even if the Wastewater Treatment Plant captures the septic systems as the Village is intending to do, that capture is capturing pollutants that are not being processed and filtered and removed from the waste stream, and taking it to the Wastewater Treatment Plant for treatment and removal. It's no net loss or no net gain; I'm not sure which direction it is.

We have evaluated that process in other systems in Ruidoso and in the Taos ski Valley area. When you capture those septic systems, you're removing that non-Point Source pollution and actually treating it to take pollutants out of the system. We think this is a net benefit to the stream.

As described, the Village will not need to expand the existing Wastewater

1 Treatment Plant. However, in the future, if
2 the ONRW Designation goes through and the
3 Village has to expand their Wastewater
4 Treatment Facility at some future point in
5 time, the Department would evaluate that and
6 would run some modeling to ensure that there
7 is no further Degradation of Water Quality.
8 It is Upstream of the ONRW boundary, so there
9 is some mixing and some dilution that can
10 occur.

11 Currently the Wastewater Treatment
12 Plant has a design capacity of .15 million
13 gallons per day. The Low Flow/Critical Low
14 Flow of the Pecos River is 10 million gallons
15 per day, so it's 1% of the total flow of the
16 Pecos River under Low Flow conditions, which
17 is typically what we use to evaluate Point
18 Source Discharges into the stream.

19 With that, I will turn it over to
20 my lawyer, Ms. Weatherly.

21 MS. WEATHERLY: Thank you, Ms. Lemon.

22 Mayor Benavidez from the Village
23 of Pecos is here. I would like to call him
24 to give --

25 I'm sorry, go ahead.

1 HEARING OFFICER ORTH: We need to
2 question Ms. Lemon first.

3 MS. WEATHERLY: I am so sorry.

4 HEARING OFFICER ORTH: No, that's all
5 right.

6 Ms. Fox, do you have any questions
7 of Ms. Lemon?

8 MS. FOX: I do not. Thank you.

9 HEARING OFFICER ORTH: Thank you.

10 Mr. Maxwell.

11 MR. MAXWELL: I do not, your Honor.
12 Thank you.

13 HEARING OFFICER ORTH: All right. Let
14 me just look to the Commissioners:

15 Commissioner Vigil.

16 COMMISSIONER VIGIL: No.

17 HEARING OFFICER ORTH: Commissioner
18 Brancard.

19 COMMISSIONER BRANCARD: No.

20 HEARING OFFICER ORTH: Anyone on this
21 side?

22 COMMISSIONER FREY: I do.

23 HEARING OFFICER ORTH: Oh, yes.

24 COMMISSIONER FREY: Just a quick
25 clarification:

EXAMINATION

BY COMMISSIONER FREY:

Q. If they want to expand the plant in the future as the population of Pecos grows, can you explain one more time how this Designation would not affect their ability to do that? I'm not clear on that.

A. Correct.

Mr. Chair, Commissioner:

It will not prevent the expansion, but we would have to evaluate how much they are going to discharge and make sure that pollutant loading remains the same.

It would depend on the mixing at the boundary of the ONRW, so it would have approximately a mile to mix in and potentially be taken up by the aquatic system before it reaches that boundary.

We would hold the pollutant loading the same at the baseline level. If there were increases to the pollutant loading at that ONRW boundary, then their current effluent limitations would be decreased to match that increase in discharge.

Q. Okay. I think I understand, but can

1 you define what that "loading" means?

2 A. The "loading" is the pollutant
3 concentration times the flow. It is the
4 combination of the actual concentration of
5 the pollutant and the amount of flow that is
6 delivering that concentration.

7 Q. The bulk amount of contaminants might
8 increase, but because the flow is increasing,
9 that number is not affected basically.

10 A. Can you restate that?

11 Q. The bulk amount of pollutants might
12 increase if they expand the plant, but
13 because the flow increases, they now...

14 I forget how I worded it.

15 A. I think I can answer this.

16 Q. Go ahead.

17 A. If the flow increases, typically the
18 concentration has to decrease in order to
19 maintain the same load.

20 Q. Right. Okay. That makes sense.

21 Then in terms of the current
22 system, their pollutants introduced are
23 covered under the Permit, so the Permit would
24 address any release or anything like that.

25 A. Mr. Chair and Commissioners:

1 That's correct. Currently there
2 is an existing Permit that allows them to
3 discharge.

4 COMMISSIONER FREY: Okay. Thank you.

5 THE WITNESS: Uh-huh.

6 HEARING OFFICER ORTH: Mr. Chair.

7 CHAIRMAN THOMSON: Yes, thank you,
8 Ms. Lemon.

9
10 EXAMINATION

11 BY CHAIRMAN THOMSON:

12 Q. Is there a TMDL for that section of
13 the Pecos River?

14 MS. LYNETTE GUEVARA: I don't know; I
15 can look that up.

16 THE WITNESS: Mr. Chair, we're
17 checking.

18 MS. LYNETTE GUEVARA: I believe there
19 are some older TMDLs; I don't know if there
20 is TMDLs for the current.

21 Q. BY CHAIRMAN THOMSON: I'm looking at
22 Table 2 in the Proposal, and it says:

23 "The river is Impaired for
24 dissolved oxygen and temperature,
25 but not nutrients."

1 THE WITNESS: Mr. Chair, that's
2 correct.

3 Q. BY CHAIRMAN THOMSON: That's
4 encouraging, but for E. coli as well. That's
5 also...

6 MS. LYNETTE GUEVARA: I don't see a
7 TMDL listed in the ROD, but let me go to the
8 list.

9 Q. BY CHAIRMAN THOMSON: That's okay.

10 A. Mr. Chair, there TMDLs on the Pecos
11 River, but in different segments.

12 Q. Again, the reason I ask the question
13 is the TMDL is where we might experience some
14 issues associated with loading. Typically
15 it's nutrients, but it could be other things.

16 A. Mr. Chair, I did find that the Pecos
17 River in this segment does have TMDLs for
18 temperature and turbidity.

19 Q. Okay. So nutrients don't appear to be
20 a problem.

21 CHAIRMAN THOMSON: Thank you.

22 HEARING OFFICER ORTH: Any other
23 questions from the Commission?

24 Anything further, Ms. Weatherly,
25 of Ms. Lemon?

1 MS. WEATHERLY: Nothing further.

2 HEARING OFFICER ORTH: All right.

3 We'll bring back Mr. Benavidez.

4 Mr. Mayor, you're still under
5 oath.

6 Go ahead.

7

8 MAYOR TELESFOR BENAVIDEZ,

9 after having been previously sworn,
10 was examined and testified as follows:

11

12 THE WITNESS: Thank you.

13 Earlier I totally forgot to
14 mention that in the first year of my
15 administration, Rincon Road East and West, we
16 ran sewer and water down Highway 60 across
17 the bridge to the other side, which is part
18 of East Pecos. That was added by former
19 Mayor Tony Roybal to the Village.

20 They did access that area, so we
21 were halfway to completing the sewer hookup
22 from those homes to the lift station, to be
23 pushed into our system. We are asking for
24 money this year to complete that job.

25 That job was started as I took

1 office, so we do have half of it done. We
2 need to run the sewer to those areas, so that
3 part of East Pecos is already going to be
4 hooked up.

5 Our sewer plant, our \$6 million
6 sewer plant was built such that in the future
7 we could add the rest of East Pecos. I was
8 told even rural Pecos, New Mexico, they can
9 get the sewer there. It was built with
10 future knowledge that we could add all of
11 East Pecos.

12 Right now there is 700-and-some
13 residents in the Village of Pecos connected
14 to that system. With the eastern and
15 western, it would be about another 270
16 houses, if I'm correct, that would be added.
17 The sewer plant will be able to accommodate
18 all of that without having to add anything to
19 it.

20 MS. WEATHERLY: Thank you, Mayor
21 Benavidez. Thank you for staying and coming
22 back to provide further comment.

23 MAYOR TELESFOR BENAVIDEZ: I was told
24 one time that if you attend, you do something
25 good, so that's the reason I'm here. It was

1 told to me by an old person. When you show
2 up, it matters, and you do something, so
3 that's the reason I'm here.

4 MS. WEATHERLY: Thank you so much.

6 DIRECT EXAMINATION

7 BY MS. WEATHERLY:

8 Q. Just to clarify, after the
9 conversation you had with the Surface Water
10 Quality Bureau during the lunch hour you say
11 that the Village of Pecos supports the ONRW.

12 A. Yes, we do.

13 MS. WEATHERLY: Thank you very much.

14 MAYOR TELESFOR BENAVIDEZ: You're
15 welcome.

16 HEARING OFFICER ORTH: Is there anyone
17 with a question of Mayor Benavidez?

18 All right. Thank you very much.

19 MAYOR TELESFOR BENAVIDEZ: Thank you
20 all.

21 MS. WEATHERLY: Thank you.

22 HEARING OFFICER ORTH: Is there any
23 reason not to close the record again at this
24 moment?

25 Any reason at all.

1 Okay. All right. Thank you all
2 very much.

3 Mr. Chair, the gavel is yours.

4 CHAIRMAN THOMSON: I don't have a
5 gavel, but thank you very much.

6 It sounds like we made a lot of
7 progress during that break. I very much
8 appreciate your getting together and working
9 out the problems.

10 As I understand it now, if we've
11 got the same Proposal, it is Exhibit 4, but
12 with a change to reflect the reach of the
13 Rios Cebolla consistent with Game and Fish's
14 language. Is that correct?

15 I see heads nodding, and that
16 works for me.

17 At this point I would ask the
18 Commission how do you want to proceed? Are
19 we ready to vote on this, or do you want to
20 discuss this further?

21 COMMISSIONER GILLIAM: Somebody's
22 ready.

23 CHAIRMAN THOMSON: Commissioner
24 Brancard.

25 COMMISSIONER BRANCARD: Chairman, I

1 don't want to cut off discussion, but I would
2 be willing to make a Motion.

3 CHAIRMAN THOMSON: Let's hear it.

4 COMMISSIONER BRANCARD: All right.

5 In the matter of WQCC 24-46,
6 Petition to Nominate Surface Waters
7 Designated as Outstanding National Resource
8 Waters, I move that we approve the Petition
9 submitted by New Mexico Environment
10 Department with the change provided by the
11 Department this afternoon.

12 COMMISSIONER FREY: I second.

13 CHAIRMAN THOMSON: Good.

14 Further discussion.

15 Are you ready to vote?

16 Okay. Ms. Jones, if you would
17 call the roll.

18 MS. JONES: Yes, I just want to
19 confirm who seconded that motion.

20 COMMISSIONER FREY: (Indicating.)

21 MS. JONES: Okay. Thank you.

22 Commissioner Brancard, how do you
23 vote?

24 COMMISSIONER BRANCARD: Yes.

25 MS. JONES: Commissioner Dominguez.

1 COMMISSIONER DOMINGUEZ: Yes.

2 MS. JONES: Commissioner Frey.

3 COMMISSIONER FREY: Yes.

4 MS. JONES: Commissioner Gilliam.

5 COMMISSIONER GILLIAM: Yes.

6 MS. JONES: Commissioner McWilliams.

7 COMMISSIONER McWILLIAMS: Yes.

8 MS. JONES: Commissioner Paladugu.

9 COMMISSIONER PALADUGU: Yes.

10 MS. JONES: Commissioner Patten.

11 COMMISSIONER PATEN: Yes.

12 MS. JONES: Chairman Thomson.

13 CHAIRMAN THOMSON: Yes.

14 MS. JONES: Commissioner Vigil.

15 COMMISSIONER VIGIL: Yes.

16 MS. JONES: Vice Chair Zemlick.

17 VICE CHAIRPERSON ZEMLICK: Yes.

18 MS. JONES: The Motion passes.

19 HEARING OFFICER ORTH: Thank you for
20 everybody's work. Thank you to the
21 Commission for your comments; that was very
22 helpful.

23 Okay. I think we're pretty well
24 done with the agenda. I think the next issue
25 is old business.

1 Is there any old business?

2 Commissioner Brancard.

3 COMMISSIONER BRANCARD: Mr. Chairman
4 the next agenda item is the next meeting date
5 and upcoming matters. I would raise the
6 question about what the schedule is for
7 deliberation on the Proposed Rule Changes for
8 Water Reuse.

9 HEARING EXAMINER ORTH: Commissioner
10 Brancard, the post-hearing submittals, as you
11 probably know, and I will say it for the rest
12 of the room, the post-hearing submittals in
13 the Water Reuse Rulemaking were received
14 Friday afternoon. Pam has already posted
15 them on the Docketed Matters page, so you can
16 see them all.

17 They are extensive, and the one
18 thing I can't yet offer would be any kind of
19 reliable, you know, estimate. For example, I
20 can offer it tomorrow or the next day sitting
21 here right this second, but I don't know how
22 long it will take me to complete a report.

23 Having said that, it's my
24 understanding the Commission doesn't want to
25 meet during the session. There is no way to

1 complete a report and have you guys
2 deliberate before the session at this point,
3 which is, you know, a little more than 30
4 days from now.

5 My memory is the session runs
6 January 17th to March 22nd. Is that true?

7 If that determination not to meet
8 during the session for that deliberation
9 holds, I think the earliest you can
10 deliberate would be March 24th, or the week
11 of the March 24th. If it's important to
12 deliberate before then, you all need to
13 discuss it amongst yourselves if you want to
14 do that during the session.

15 CHAIRMAN THOMSON: Okay. Our March
16 meeting would be before that; March 24th
17 would be a Special Meeting. Do we want to do
18 that?

19 Do we want to have a Special
20 Meeting to consider the Water Reuse Rule or
21 do we want to postpone it to April or May?

22 You know, we do have a pretty busy
23 schedule next spring with a hearing in
24 January. I also think there are some other
25 issues that are coming up that may be

1 time-consuming.

2 Hearing none, let's put it off
3 until April. Is that okay with everyone?

4 COMMISSIONER FREY: May sounds even
5 better.

6 CHAIRMAN THOMSON: Yes, the comment
7 was "May sounds even better," but let's not
8 put it off longer than we need to.

9 I would like to say, I don't think
10 we need the Court Reporter's services for
11 this. Is that correct?

12 HEARING OFFICER ORTH: For the Water
13 Reuse Rule I think typically -- oh, for this
14 scheduling discussion. Oh, I'm very sorry.

15 Thank you very much.

16 THE CERTIFIED REPORTER: Thank you,
17 Commissioners. It was a pleasure being here.

18 (The proceedings adjourned at 2:09
19 p.m.)

STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION

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

HEARING RE THE MATTER OF THE 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 (ONRW).

BEFORE THE HONORABLE:

FELICIA L. ORTH

TUESDAY, DECEMBER 10, 2024

9:33 A.M.

REPORTER'S CERTIFICATE

I, DAVID M. LEE, RMR, CRR, CERTIFICATE
NUMBER 50391, NEW MEXICO CCR NUMBER 537, DO
HEREBY CERTIFY that on TUESDAY, DECEMBER 10,
2024, the Proceedings in the above-captioned
matter were taken before me, and that I did
report in stenographic shorthand the
Proceedings set forth herein. The foregoing
pages are a true and correct transcription,
all done to the best of my ability.

I FURTHER CERTIFY that I am



1 neither employed by, nor related to, nor
2 contracted with (unless excepted by the
3 rules) any of the parties or attorneys in this
4 case, and that I have no interest whatsoever
5 in the final disposition of this case in any
6 court.

7 DATED at Santa Fe, New Mexico,
8 this 3rd day of January, 2024.

9 

10 DAVID M. LEE, RMR, CCR
11 Arizona Certificate Number 50391
12 New Mexico Certificate Number
13 License Expires: 12/31/2025
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