Amigos Bravos • American Rivers Action Fund •
Breath of My Heart Birthplace • Communities for Clean Water •
Concerned Citizens for Nuclear Safety • Gila Resources Information Project •
GreenLatinos • New Mexico Acequia Association •
New Mexico & El Paso Interfaith Power and Light • New Mexico Wild •
Partnership for Earth Spirituality • Sierra Club, Rio Grande Chapter •
Trout Unlimited • Western Environmental Law Center

October 14, 2025

Michael Baca
Standards & Outreach Team Leader
Surface Water Quality Bureau
New Mexico Environment Department
1190 S. St. Francis Dr.
Sent via email to: michael.baca1@env.nm.gov

RE: Comments on the New Mexico Environment Department's Proposed Amendments to New Mexico's Water Quality Standards (20.6.4 NMAC) – 2026 Triennial Review

Dear Mr. Baca,

The undersigned organizations submit the following comments in response to the New Mexico Environment Department Surface Water Quality Bureau's ("NMED") request for comments on draft proposed changes to 20.6.4 NMAC as part of the 2026 Triennial Review of Water Quality Standards. Collectively we represent thousands of New Mexicans that care about protecting clean water in New Mexico for drinking, irrigation, wildlife, recreation, and spiritual practices and traditions. We have come together to submit these comments with a common goal of ensuring that New Mexico's water quality standards are protective enough to support the diverse human and non-human uses of our state's water resources.

Generally, we note that the State's obligations pursuant to the Clean Water Act ("CWA") are to "protect the public health or welfare, enhance the quality of water," and wherever possible, to ensure that water quality allows for the "protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water." 33 U.S.C. § 1313(c)(2)(A); 33 U.S.C. § 1251(a)(2). Similarly, the New Mexico Water Quality Act ("WQA") directs the Commission to adopt standards that "shall at a minimum protect the public health or welfare, enhance the quality of water and serve the purposes of the Water Quality Act." NM Stat. 74-6-4(D). These goals, in particular the emphasis on standards that enhance the quality of water, represent what is a fundamental truth in New Mexico—that water is the lifeblood of our communities, ecosystems, economy, and way of life. We thank the Surface Water Quality Bureau of the New Mexico Environment Department (NMED) for all your ongoing work to implement these goals and to protect our state's water quality.

Below, we provide both comments on priorities we would like NMED to consider during this Triennial Review as well as specific comments on NMED's proposed amendments.

I. PRIORITY ISSUES TO ADD TO NMED's PETITION DURING THE 2026 TRIENNIAL REVIEW

While we understand that NMED is constrained by staffing shortages and a heavy workload that includes multiple concurrent rulemaking processes, there are numerous issues that we urge NMED to add to your Triennial Review petition.

A. Outstanding Waters (20.6.4.8 NMAC and 20.6.4.9 NMAC)

i. Change "Outstanding National Resource Waters" to "Outstanding Waters"

The unwieldy name of Outstanding National Resource Waters (ONRWs) is constantly being confused and mixed up. People consistently call them Outstanding *Natural* Resource Waters or mix up the order of the letters in the acronym and call them ORNWs or some other combination. We suggest that NMED consider advocating for a change in name from "Outstanding National Resource Waters" to "Outstanding Waters". Not only will this make the name easier to remember, but it will also clear up the common misconception that ONRW protections are a federal designation, when in fact ONRWs are designated at the state level by the New Mexico Water Quality Control Commission. While there may be some argument for maintaining the existing name due to the fact that ONRW protections are laid out in the federal Clean Water Act and associated regulations, (specifically in Tier III of the federal antidegradation policy), these federal requirements and connections will not disappear by changing the name to something more approachable and easier to remember. This is especially the case if it is explicitly stated in 20.6.4 NMAC that Outstanding Waters are protected under Tier III of the federal antidegradation policy. Other states have adopted different names for their Tier III waters, Pennsylvania for example calls their Tier III waters "Exceptional Value Waters". Alternatively, instead of replacing the name completely, NMED could consider a different abbreviation of Outstanding National Resource Waters. Instead of "ONRW," the abbreviation could be changed to "Outstanding Waters" throughout the 20.6.4 NMAC

Recommendation: Replace the name "Outstanding National Resource Waters" or "ONRW" or both with "Outstanding Waters".

ii. Strengthen Outstanding Waters Implementation

Changes to the antidegradation policy and implementation plan are needed to ensure that if degradation is found in Outstanding Waters, appropriate steps are taken to address the degradation. Currently the Outstanding Waters language found at 20.6.4.8.A(3)(a) and (4)(a) NMAC includes primarily guidance on how to degrade Outstanding Waters on a short-term basis. While these components of the standards are important to ensure that restoration and responses to emergencies can occur, they should not be the only component of the Outstanding Waters protections found at 20.6.4.8 NMAC. Policy to protect the state's most precious waters should not primarily focus on avenues to degrade such waters. We recommend adopting specific requirements and steps in 20.6.4.8 NMAC to ensure that degradation is not occurring in New Mexico's designated Outstanding Waters. Currently, all of the Outstanding Waters in New Mexico are on United States Forest Service (USFS) lands. A good place to start in terms of implementation guidance would be to

set up steps and requirements for cross agency consultation and engagement. 20.6.4.8.B could also outline how implementation of Outstanding Waters protection shall be assessed and summarized in the 303d/305b Report. It is also essential to create a process that will be undertaken if degradation is found in Outstanding Waters. For example, there could be requirements in 20.6.4.8. to sample more frequently in any Outstanding Water where degradation has been detected. Other such actions could include engaging with landowners and other stakeholders to identify sources of degradation, prioritizing restoration dollars in these waters, and prohibiting all short and temporary degradation besides that associated with restoration.

Recommendation: Add language to 20.6.4.8 and 9 NMAC that outline steps the Department will take if increased degradation is detected in an ONRW.

B. Mixing Zones (20.6.4.11.E and F NMAC)

Climate change is creating massive, previously unseen, fluctuations of flow in New Mexico's rivers and streams, making it impossible to ensure that mixing zones are not harming public health or aquatic resources. If the flow in a receiving waterbody swings from large flood events to very low flows, as we can expect, and in fact are already seeing in a changing climate, it is difficult to determine the dilution factor to calculate a mixing zone. In addition, increased flooding events can result in increased pollutant loads in receiving waters from many different sources, making mixing zones all the more inappropriate. Therefore, a concrete step to make New Mexico standards more responsive to climate change is to stop allowing mixing zones. In addition, it is unclear how NMED enforces 20.6.4.11.E(5), which requires that a continuous passage either through or around a mixing where all standards are met be maintained at all times. Again, with climate change and extreme fluctuations of flows and temperatures meeting this requirement and demonstrating this requirement is met is extremely challenging. It would be simpler, safer, and easier for both NMED and permittees to demonstrate compliance if mixing zones were eliminated entirely. Alternatively, if mixing zones aren't prohibited outright, we urge NMED to put additional limitations on mixing zones, such as no mixing zones allowed in either impaired waterbodies, Outstanding Waters (ONRWs), or anywhere that domestic water supply or primary contact is designated.

Recommendation: Eliminate mixing zones in New Mexico as an appropriate step in response to the massive changes and fluctuations in flow we are seeing and expect to see as a result of a changing climate. Alternatively, if mixing zones are prohibited full scale, eliminate mixing zones in impaired waterbodies, Outstanding Waters, and anywhere with a domestic water supply or primary contact use is designated.

C. Applicability of Water Quality Standards – Exceptions (20.6.4.11.I.(1))

How are increased storm events due to climate change considered in this section? It appears that this section of the standards could be read to exempt climate change impacts, such as increased intensity of storm events and faster spring runoff, from applicability of water quality standards. Even without considering climate change impacts, this section is inappropriately broad, and we recommend deleting it. NMED itself has identified stormwater as "a leading cause of water pollution" in New Mexico.[1] It does not make sense to have a whole exception for the applicability of water quality standards during storm events. Fish still swim in our rivers during storm events and

[1] New Mexico Environment Department/Surface Water Quality Bureau (NMED/SWQB). 2024. 303d/305b Report for 2024-2026. Santa Fe, NM. Pg. 61.

need dissolved oxygen to breathe. People boat and swim in waters that have stormflow impacts. In some cases, these impacts can be seen hours or even up to a day after a storm event. In addition, it is difficult to understand how this exception is implemented. For example, how does NMED determine what contaminants in stormwater runoff are from natural causes? Many of the contaminants we see in stormwater are from poor land use management, which certainly is not "natural". Climate change adds another layer of complexity and difficulty in implementing this exception, because with a changing climate we are likely to see increased intensity of storm events that will result in increased pollutant loading. Climate change is not a natural event, and water quality impacts from climate change should not be folded into this exception. While we strongly recommend deleting this section, if it remains in the standards, language could be added to constrain this section so that designated uses are better protected. This is especially important as climate change impacts to our water resources in New Mexico become the norm rather than the exception. Communities impacted by post wildfire flooding should be able to access the state resources such as state monitoring and identification of impairments, writing TMDLs, and applying section 319 restoration monies to impacted waterbodies, without the risk of those impairments falling under the exception at 20.6.4.11.I(1) NMAC.

Recommendation: Delete section (20.6.4.11.I(1)) in its entirety.

D. Compliance with Water Quality Standards (20.6.4.12.G. NMAC)

We recommend putting constraints on compliance schedules to guard against overuse and abuse of this important tool. For example, we suggest adding a time limit of 5-years and requirements for revisiting compliance schedules during permit renewals. In addition, if a permit is administratively extended, any compliance schedule included in the permit should be reviewed 5-years after issuance of the permit.

Recommendation: Include time constraints and review requirements for compliance schedules.

E. Incorporate Produced Water Constituents into 20.6.4.900 NMAC

With the passage of HB 546 and recent rulemakings considering the discharge of treated produced water to our state's surface water resources, it is imperative that NMED take steps to identify and propose numeric criteria for the numerous contaminants that do not currently have numeric water quality criteria standards in 20.6.4 NMAC. We urge NMED to look at the list submitted by the Environmental Defense Fund ("EDF") on 12/9/20, as part of the triennial review comment period for the 2020 Triennial Review, to see if there are available data and information that would enable NMED to propose criteria for toxic pollutants found in produced water for which we currently do not have a standard. EDF's 2020 comments clearly outline the need and the ability to adopt standards for toxic pollutants found in produced water:

> Through an extensive literature review, EDF has identified approximately 1,360 chemicals that can be found in produced water nationally and therefore have the potential to be found in New Mexico produced waters. An estimated 88 of those already have New Mexico surface water quality standards that could be immediately applied in a potential pilot testing or preliminary permitting program. Of the remainder, about 180 chemicals…… have an approved standard method associated with them,

> and toxicity values that could be used to conduct human health or aquatic life risk assessments that are the prelude to developing water quality criteria to adopt into a WQS. In other words, EDF estimates that at least 180 potential produced water chemicals have the type of tools and data necessary to begin a process of considering associated water quality criteria and standard updates *today*.

On January 6, 2021, twenty NGO groups - many of whom have signed onto this letter - cited the EDF comment letter and called on NMED in to develop standards for toxic pollutants found in produced water.

It is through the development and adoption of specific criteria for the toxic substances typically found in produced water that we will get closer to safely discharging treated produced water, a goal that has been repeatedly expressed by this state administration. If the state is serious about discharging produced water to our surface waters, then the appropriate water quality criteria must be developed and adopted.

Specifically, as outlined in EDF's letter, there are data available, including in many cases approved analytical methods for developing standards for 180 constituents found in produced water for which New Mexico currently does not have standards. While we realize that developing numeric criteria can be a long and arduous process, it is essential that the standards are robust enough to protect the existing and designated uses of New Mexico's water resources *before* produced water is discharged into surface waterbodies. To help identify priority pollutants among the 180 identified by EDF, more work should be done to characterize produced water in New Mexico.

> *Recommendation: Identify several constituents found in produced water in New Mexico for which there are available data for inclusion in 20.6.4.900 NMAC during the 2026 Triennial Review. In addition, start now to develop numeric criteria for all 180 constituents common in produced water nationwide, for which there is an approved standard method and toxicity values and for which we do not currently have a standard, for adoption at a later date. NMED should also encourage and support increased characterization of produced water in New Mexico to help identify which of the 180 constituents are most common in New Mexico's produced water and therefore should be prioritized for standard development.*

II. COMMENTS ON NMED'S PROPOSED AMENDMENTS

We thank NMED for adding to the wetland definition; proposing a wetland general criterion; including wetland conditions in the antidegradation policy; and proposing new aquatic life use criteria for PFOA, PFOS, and selenium. Standards for wetlands, PFAS, and selenium are critical for implementing a state surface water permitting program, and we appreciate NMED's efforts and work on these topics. Our specific comments below are organized by overarching topic area:

A. Wetlands

i. Wetland Definition at 20.6.4.7.W NMAC

We support NMED's proposed language to this section and believe it will help in the development of the surface water permitting program.

ii. Wetland General Criterion at 20.6.4.13.N NMAC

We support the creation of wetland water quality standards and believe they are necessary in the development and implementation of the surface water permitting program. However, we do not believe that a criterion to protect wetlands of the state belongs in the general criteria because all of the other criteria in that section are pollutants or conditions, not aquatic features or functions. The list of general criteria are often called the "free-froms", because general criteria typically call for waters to be "free-from" specific pollutants. In contrast, the proposed general criteria for wetlands outlines wetland conditions and functions that must be protected.

Instead, we suggest adding some of the proposed language for 20.6.4.13.N into the antidegradation policy and implementation sections at 20.6.5.8 and 9 NMAC because the language is about preventing degradation and maintaining and protecting wetlands. In addition, we also suggest creating a statewide wetland segment at 20.6.4.96 NMAC that includes all of the language currently proposed for 20.6.4.13.N. We also suggest adding carbon sequestration to the proposed list of some of the possible wetland functions.

The water quality standards must provide a way to determine whether wetlands have physical, biological, or chemical impairments. The narrative general criterion lists functions, but it provides no metrics or tools for such a determination. In EPA guidance for developing wetland water quality standards and in many states, numeric criteria are identified as indicators of wetland functional health or impairment. For example, base flow, dissolved oxygen, conductivity, pH, salinity, species diversity, water levels, and conditions such as water temperature variations, sedimentation patterns, and wetland hydroperiod can all be used to help determine quality and impacts to wetland functions.

We recommend establishing a section for wetlands, as there is for ephemeral waters and intermittent waters, listing wetland functions, designated uses, and relevant narrative and numeric criteria to be used along with functional assessments. This new section in the water quality standards will provide NMED the framework to assess and determine the health or impairment of wetland functions as needed for the purposes of the biennial Integrated Report as well as for the implementation of the state surface water permitting program.

Resources include (with links):

- Wetland Water Quality Standards: Resources (pdf)
- EPA Wetland Water Quality Standards: Program Building Activities Menu (pdf) - 2023
- Impacts on Quality of Inland Wetlands of the United States: A Survey of Indicators, Techniques, and Applications of Community Level Biomonitoring Data

Recommendation: Incorporate the narrative criterion language related to preventing degradation into the antidegradation policy and implementation sections, create a new statewide wetland segment at 20.6.4.96 NMAC, add carbon sequestration to the functions, and add a section that provides metrics and procedures to assess functions and determine impairments.

iii. Wetland Language in Antidegradation Policy and Implementation Plan.

We support the inclusion of wetlands in the antidegradation policy and implementation plan, especially the reference to wetland conditions as a measure of ecological integrity, as demonstrated by wetland functions.

In addition to the proposed language, we recommend that NMED incorporate language in 20.6.4.8.A(2) that tracks with NMED's proposed language in the draft surface water quality regulations requiring avoidance and minimization of impacts to aquatic resources through an assessment of functions and any potential impacts to them. If degradation of aquatic resources is allowed through dredge and fill projects, we also recommend including language requiring compensatory mitigation. In addition, we recommend that NMED move the following language currently proposed for 20.6.4.13.N to 20.6.4.8 NMAC: "Wetlands shall be maintained and protected such that degradation through direct, indirect, or cumulative impacts does not result in the net loss of wetland acreage or biological, chemical, physical, and hydrological functions to the extent that such functions occur, as characterized by state-specific benchmarks."

The Antidegradation Policy must set the standards for preventing degradation. These rules should reference the wetlands that are high quality or exceptional in some way, and it must reference the process for determining when degradation is proposed or occurring.

> *Recommendation: Develop and include language that requires avoidance and minimization of impacts to aquatic resources including wetland functions using functional assessments as part of the antidegradation policy. Identify categories of exceptional wetlands and methods to determine how high quality will be determined. Move language about no net loss of wetlands from degradation from the new proposed general criterion section to the antidegradation policy.*

B. PFAS

PFOA, PFOS, PFBS, and thousands more compounds belong to a large class of synthetic chemicals known as per- and polyfluoroalkyl substances, or PFAS. PFAS contamination is a major water quality issue facing New Mexico that has resulted in economic losses to our state's dairy industry and substantial impacts to public health and wildlife populations. Developing standards for PFAS chemicals is essential to protect New Mexico's surface water resources.

We support NMED's proposal to adopt numeric criteria for PFOA and PFOS. In addition, we recommend NMED adopt the numeric human health criteria proposed by EPA in December 2024 for PFOA, PFOS and PFBS:

Table 1. Draft Human Health Criteria (HHC) for Three PFAS.

PFAS	Water + Organism HHC (ng/L; ppt)[1]	Organism Only HHC (ng/L; ppt)[1]
PFOA	0.0009	0.0036
PFOS	0.06	0.07
PFBS	400	500

[1] Values are provided in ng/L units to aid in comparison to method detection limit (MDL).

(From EPA's Technical Fact Sheet on Draft National Recommended Human Health Ambient Water Quality Criteria for PFOA, PFOS, and PFBS December 2024[2])

[2] https://www.epa.gov/system/files/documents/2024-12/draft-hhc-pfas-tech-fact-sheet.pdf

Recommendation: We support NMED's proposed aquatic life criteria for PFOA and PFOS and urge NMED to also propose numeric Human Health criteria for PFOA, PFOS and PFBS as proposed by EPA in December 2024.

C. Site-Specific Criteria

We support the requirements of (notice to the department and submission of a workplan before an entity outside the department may develop site-specific criteria and petition the commission for their adoption. The draft rule doesn't provide any timeframes in this process. We recommend that the notice and workplan should be required at least 6 months before the commission is petitioned.

Recommendation: We recommend that entities outside of the department notice the department and provide a workplan for their intended development of site-specific criteria at least 6 months prior to petitioning the commission.

D. Use Attainability Analysis

EPA has not yet updated their Water Quality Standards Handbook. The changes proposed to three chapters in 2025 are still draft, however, reference to the handbook is appropriate.

The references to the Interim Economic Guidance for Water Quality Standards – Workbook, March 1995 and the Clean Water Act Financial Capability Assessment Guidance, March 2024 must be qualified to indicate that those documents do not adequately include metrics or tools to calculate the benefits of controlling pollution to communities or the costs of not controlling pollution to communities. Proponents of removing designated uses must include those considerations when employing factor 40 CFR 131.10(g)(6).

Recommendation: We recommend that the list of methods to be relied upon for developing use attainability analyses also include resources to assess and calculate the benefits of water pollution control and the costs of not controlling pollution.

Thank you for your consideration of our recommendations. Please don't hesitate to contact us if you have any questions.

Sincerely,

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2026 Triennial Review
Amigos Bravos' 10/14/25 red(green)line of proposed changes to 20.6.4 NMAC

Markup Key:

- NMED's proposed changes appear in red underline and ~~strikethrough~~
- Amigos Bravos' proposed changes appear in green underline and ~~strikethrough~~
- Amigos Bravos' comments on NMED changes and basis for Amigos Bravos proposed changes appear in *black italics* below specific sections for which changes are proposed.

20.6.4.7 DEFINITIONS: Terms defined in the New Mexico Water Quality Act, but not defined in this part will have the meaning given in the Water Quality Act.

A. Terms beginning with numerals or the letter "A," and abbreviations for units.

(1) "4Q3" means the hydrologically based critical low flow as determined by the minimum average flow over four consecutive days that occurs with a frequency of once in three years.

P. Terms beginning with the letter "P".

(7) "Public water supply" means the use or storage of water to supply a public water system as defined by ~~New Mexico's Drinking Water Regulations, 20.7.10 NMAC~~ 40 CFR 141. Water provided by a public water system ~~may need to~~ shall undergo treatment to ~~achieve~~ comply with drinking water ~~quality~~ standards.

T. Terms beginning with the letter "T".

(1) "TDS" means total dissolved solids, also termed "total filterable residue."

(2) "Temporary standard" means a time-limited designated use and criterion for a specific pollutant(s) or water quality parameter(s) that reflect the highest attainable condition during the term of the temporary standard.

(~~2~~3) "Toxic pollutant" means those pollutants, or combination of pollutants, including disease-causing agents, that after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will cause death, shortened life spans, disease, adverse behavioral changes, reproductive or physiological impairment or physical deformations in such organisms or their offspring.

(~~3~~4) "Tributary" means a perennial, intermittent or ephemeral waterbody that flows into a larger waterbody, and includes a tributary of a tributary.

(~~4~~5) "Turbidity" is an expression of the optical property in water that causes incident light to be scattered or absorbed rather than transmitted in straight l

W. Terms beginning with the letter "W".

(4) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, ~~a prevalence of~~ vegetation, typically adapted for life in saturated soil conditions in New Mexico. Wetlands are unique surface waters of the state that vary widely because of regional and local differences in soils, topography, climate, hydrology, water chemistry, vegetation and other factors and provide distinct chemical, biological, physical, and hydrological functions within a watershed. Wetlands that are constructed outside of a surface

water of the state for the purpose of providing wastewater treatment and that do not impound a surface water of the state are not included in this definition.

Amigos Bravos Comment on Section 20.6.7.W(4): *Amigos Bravos supports the changes to the Wetlands definition.*

20.6.4.8 ANTIDEGRADATION POLICY AND IMPLEMENTATION PLAN:

A. Antidegradation Policy: This antidegradation policy applies to all surface waters of the state.

(1) Existing uses, as defined in Paragraph (4) of Subsection E of 20.6.4.7 NMAC, and the level of water quality or wetland conditions necessary to protect the existing uses shall be maintained and protected in all surface waters of the state. Wetland conditions are ~~is a~~ measures of ecological integrity and, by inference, wetland quality (i.e., functions) and quantity (i.e., acreage).

(2) Where wetland conditions or the quality of a surface water of the state exceeds levels necessary to support the propagation of fish, shellfish, and wildlife, and recreation in and on the water, those conditions and that quality shall be maintained and protected unless the commission finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the state's continuing planning process, that allowing lower water quality or degraded wetland conditions, including loss of wetland acreage or wetland functions, is necessary to accommodate important economic and social development in the area in which the water is located. In allowing such degradation or lower water quality, the state shall assure wetland conditions and water quality adequate to protect existing uses fully. Further, the state shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources, that impacts to surface waters, including wetlands have been avoided and minimized to the maximum extent practicable for all new and existing dredge and fill projects, and that all cost-effective and reasonable BMPs for nonpoint source control have been implemented. Wetlands shall be maintained and protected such that degradation through direct, indirect, or cumulative impacts does not result in the net loss of wetland acreage or biological, chemical, physical, and hydrological functions to the extent that such functions occur, as characterized by state-specific benchmarks. Additionally, the state shall encourage the use of watershed planning as a further means to protect surface waters of the state.

(3) No degradation, including loss of ~~wetland~~ acreage or ~~wetland~~ functions of surface waters, including wetlands, shall be allowed in waters designated by the commission as outstanding national resource waters (ONRWs), except as provided in Subparagraphs (a) through (e) of this paragraph and in Paragraph (4) of this Subsection A

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

(b) For surface waters including wetlands of the state other than ONRWs, the department shall review on a case-by-case basis discharges that may result in degradation from permissible restoration or maintenance activities, and may approve such activities in accordance with the following:

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

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

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

(5) If degradation, besides the short-term degradation allowed under Subsection A(3)(a) through (e) and Subsection A(4) of this Section, is detected in an Outstanding Water:

(a) increased monitoring of the Outstanding Water by the Department at a frequency of at least once a year shall be conducted; and

(b) additional actions as outlined in the continuing planning process shall be initiated to determine the source of the degradation and to identify mitigating measures.

~~(5)~~ **(6)** In those cases where potential water quality impairment associated with a thermal discharge is involved, this antidegradation policy and implementing method shall be consistent with Section 316 of the federal Clean Water Act.

~~(6)~~ **(7)** In implementing this section...

B. Implementation Plan: The department, acting under authority delegated by the commission, implements the water quality standards, including the antidegradation policy, by describing specific methods and procedures in the continuing planning process and by establishing and maintaining controls on the discharge of pollutants to surface waters of the state. The steps summarized in the following paragraphs, which may not all be applicable in every water pollution control action, list the implementation activities of the department. These implementation activities are supplemented by detailed antidegradation review procedures developed under the state's continuing planning process. The department:

(1) obtains information pertinent to the impact of the effluent on the receiving water and advises the prospective discharger of requirements for obtaining a permit to discharge;

(2) reviews the adequacy of existing data and conducts a water quality survey of the receiving water in accordance with an annually reviewed, ranked priority list of surface waters of the state requiring total maximum daily loads pursuant to Section 303(d) of the federal Clean Water Act;

(3) assesses the probable impact of the effluent on the receiving water relative to its ~~attainable~~ existing or designated uses and numeric and narrative criteria;

(16) develops list of surface waters including wetlands of the state not attaining designated uses, pursuant to Sections 305(b) and 303(d) of the federal Clean Water Act; and

(17) develops list of designated Outstanding Waters where degradation has been detected and identifies potential sources of pollution, enforcement actions to be taken, and BMPs to be implemented to halt or remedy the degradation.

Amigos Bravos Basis for Change for Section 20.6.4.8 NMAC:

Amigos Bravos supports the wetland language that NMED has proposed to add to 20.6.4.8 NMAC. In addition to NMED's proposed language, Amigos Bravos proposes to incorporate the language related to degradation that NMED has proposed for a new Section 20.6.4.13.N (General Criterion for Wetlands) into 20.6.4.8.A(2) as we believe the antidegradation section is a more appropriate place for that language. Amigos Bravos also proposes to include "wetlands" and language about dredge and fill permits into 20.6.4.8 NMAC to provide a consistent dredge and fill complement to the point source language currently included in this section.

Changes to the antidegradation policy and implementation plan are needed to ensure that if degradation is found in Outstanding Waters, appropriate steps are taken to address the degradation. Currently the Outstanding Waters language found at 20.6.4.8.A(3)(a) and (4)(a) NMAC includes primarily guidance on how to degrade Outstanding Waters on a short-term basis. While these components of the standards are important to ensure that restoration and responses to emergencies can occur, they should not be the only component of the Outstanding Waters protections found at 20.6.4.8 NMAC. Policy to protect the state's most precious waters should not primarily focus on avenues to degrade such waters. We recommend adopting specific requirements and steps in 20.6.4.8 NMAC to ensure that degradation is not occurring in New Mexico's designated Outstanding Water, and if it is found that there are adequate steps taken to

address it.

20.6.4.9 No changes proposed

20.6.4.10 REVIEW OF STANDARDS; NEED FOR ADDITIONAL STUDIES:

~~**F.** If the commission grants a rulemaking hearing for the amendment or adoption of a water quality standard, including ONRW nominations, site-specific criteria, use attainability analyses, and designating classified segments, the petitioner shall be responsible for the costs of the administrative rulemaking process. Costs include: venue, hearing officer, court reporter, original transcripts, translation services, interpretation services, and public notice requirements including publication in newspapers and in the New Mexico register. The petitioner shall coordinate with the commission administrator and the department on rulemaking hearing requirements.~~

F. Site-specific criteria.

(1) The commission may adopt site-specific numeric criteria applicable to all or part of a surface water of the state based on relevant site-specific conditions such as:

(a) actual species at a site are more or less sensitive than those used in the national criteria data set;

(b) physical or chemical characteristics at a site such as pH or hardness alter the biological availability and/or toxicity of the chemical;

(c) physical, biological or chemical factors alter the bioaccumulation potential of a chemical;

(d) the concentration resulting from natural background exceeds numeric criteria for aquatic life, wildlife habitat or other uses if consistent with Subsection G of 20.6.4.10 NMAC; or

(e) other factors or combination of factors that upon review of the commission may warrant modification of the default criteria, subject to EPA review and approval.

(2) Site-specific criteria must fully protect the designated use to which they apply. In the case of human health-organism only criteria, site-specific criteria must fully protect human health when organisms are consumed from waters containing pollutants.

(3) Any person may submit notice to the department stating their intent to derive site-specific criteria for a surface water of thestate no less than six months prior to petitioning the commission to adopt such criteria. The notice shall include a work plan supporting the development of site- specific criteria for the department's review and comment.

(4) Site-specific criteria shall be developed in accordance with the reviewed work plan, based on one or more of the site-specific conditions noted in paragraph 1, derived from a scientifically defensible method and protect the designated uses to which they apply.

(5) The work plan shall identify, at a minimum:

(a) the waterbody to consider and the reasoning for site-specific criteria;

(b) the methodology to be used to derive criteria;

(c) the source and validity of data to be used;

(d) the provisions for consultation with appropriate state and federal agencies;

(e) a description of how stakeholders and potentially affected Indian nations, tribes, or pueblos will be identified and engaged;

(f) a description of the public notice mechanisms to be employed; and

(g) the expected timelines and associated administrative actions to be taken for a rulemaking petition, pending the outcome of criteria development.

(6) Upon completion of site-specific criteria development, the data, findings and conclusions shall be submitted to the department, and public notice shall be provided in accordance with the approved work plan.

G. Site-specific criteria based on natural background. The commission may adopt site-specific criteria equal to the concentration resulting from natural background where that concentration protects the designated use. The concentration resulting from natural background supports the level of aquatic life and wildlife habitat expected to occur naturally at the site absent any interference by humans. Domestic water supply, primary or secondary contact, or human health-organism only criteria shall not be modified based on natural background. A determination of natural background shall:

H. Temporary standards.

~~**(12)** "Temporary standard" means a time-limited designated use and criterion for a specific pollutant(s) or water quality parameter(s) that reflect the highest attainable condition during the term of the temporary standard.~~.

Amigos Bravos Comments and Basis for Change for Section 20.6.4.10 NMAC:
While Amigos Bravos understands NMED's desire to limit the potential economic burden of lots of petitions and proposed changes to 20.6.4 NMAC, NMED's proposed change creates a pay to play situation where only the wealthier stakeholders in the state will have the ability to petition to change standards. Unfortunately, the wealthier stakeholders in the state are often dischargers that have a vested interest in weakening the standards of the waters into which they discharge. Amigos Bravos therefore opposes the proposed blanket requirement that petitioners pay for the hearings. Alternatively, we suggest that NMED add the requirement to pay for the hearing to the UAA and temporary standards sections to ensure that hearings related to those two procedures are paid for by the petitioner.

Amigos Bravos has also added a timeframe for the notice of development of site-specific criteria and workplan to assure that it is provided well before a petition is presented to the commission.

20.6.4.10 REVIEW OF STANDARDS

20.6.4.11 APPLICABILITY OF WATER QUALITY STANDARDS

~~**D**. Mixing zones: A limited mixing zone, contiguous to a point source wastewater discharge, may be allowed in any stream receiving such a discharge. Mixing zones serve as regions of initial dilution that allow the application of a dilution factor in calculations of effluent limitations. Effluent limitations shall be developed that will protect the most sensitive existing, designated or attainable use of the receiving water.~~

~~**E.** Mixing zone limitations: Wastewater mixing zones, in which the numeric criteria set under Subsection F of 20.6.4.13 NMAC, 20.6.4.97 through 20.6.4.899 NMAC or 20.6.4.900 NMAC may be exceeded, shall be subject to the following limitations:~~

~~**(1)** Mixing zones are not allowed for discharges to lakes, reservoirs, or playas; these effluents shall meet all applicable criteria set under Subsection F of 20.6.4.13 NMAC, 20.6.4.97 through 20.6.4.899 NMAC and 20.6.4.900 NMAC at the point of discharge.~~

~~**(2)** The acute aquatic life criteria, as set out in Subsection I, Subsection J, and Subsection K of 20.6.4.900 NMAC, shall be attained at the point of discharge for any discharge to a~~

~~surface water of the state with a designated aquatic life use.~~

~~**(3)** The general criteria set out in Subsections A, B, C, D, E, G, H and J of 20.6.4.13 NMAC, and the provision set out in Subsection D of 20.6.4.14 NMAC are applicable within mixing zones.~~

~~**(4)** The areal extent and concentration isopleths of a particular mixing zone will depend on site-specific conditions including, but not limited to, wastewater flow, receiving water critical low flow, outfall design, channel characteristics and climatic conditions and, if needed, shall be determined on a case-by-case basis. When the physical boundaries or other characteristics of a particular mixing zone must be known, the methods presented in Section 4.4.5, "Ambient-induced mixing," in "Technical support document for water quality-based toxics control" (March 1991, EPA/505/2-90-001) shall be used.~~

~~**(5)** All applicable water quality criteria set under Subsection F of 20.6.4.13 NMAC, 20.6.4.97 through 20.6.4.899 NMAC and 20.6.4.900 NMAC shall be attained at the boundaries of mixing zones. A continuous zone of passage through or around the mixing zone shall be maintained in which the water quality meets all applicable criteria and allows the migration of aquatic life presently common in surface waters of the state with no effect on their populations.~~

Alternatively, incorporate the following changes to 20.6.4.11.E NMAC:

E. Mixing zone limitations: Wastewater mixing zones, in which the numeric criteria set under Subsection F of 20.6.4.13 NMAC, 20.6.4.97 through 20.6.4.899 NMAC or 20.6.4.900 NMAC may be exceeded, shall be subject to the following limitations:

(1) Mixing zones are not allowed for discharges to lakes, reservoirs, or playas; these effluents shall meet all applicable criteria set under Subsection F of 20.6.4.13 NMAC, 20.6.4.97 through 20.6.4.899 NMAC and 20.6.4.900 NMAC at the point of discharge.

(2) Mixing zones are not allowed in Outstanding National Resource Waters; these effluents shall meet all applicable criteria set under Subsection F of 20.6.4.13 NMAC, 20.6.4.97 through 20.6.4.899 NMAC and 20.6.4.900 NMAC at the point of discharge.

(3) In impaired waterbodies mixing are not allowed for parameters that are causing impairment.

(~~2~~) (4) The acute aquatic life criteria, as set out in Subsection I, Subsection J, and Subsection K of 20.6.4.900 NMAC, shall be attained at the point of discharge for any discharge to a surface water of the state with a designated aquatic life use.

(~~3~~) (5) The general criteria set out in Subsections A, B, C, D, E, G, H and J of 20.6.4.13 NMAC, and the provision set out in Subsection D of 20.6.4.14 NMAC are applicable within mixing zones.

(~~4~~) (6) The areal extent and concentration isopleths of a particular mixing zone will depend on site-specific conditions including, but not limited to, wastewater flow, receiving water critical low flow, outfall design, channel characteristics and climatic conditions and, if needed, shall be determined on a case-by-case basis.

(~~5~~) (7) All applicable water quality criteria set under Subsection F of 20.6.4.13 NMAC, 20.6.4.97 through 20.6.4.899 NMAC and 20.6.4.900 NMAC shall be attained at the boundaries of mixing zones. A continuous zone of passage through or around the mixing zone shall be maintained in which the water quality meets all applicable criteria and allows the migration of aquatic life presently common in surface waters of the state with no effect on their populations.

F. Human health-organism only criteria in Subsection J of 20.6.4.900 NMAC apply to those waters with a designated, existing or attainable aquatic life use. When limited aquatic life is a designated use, the human health-organism only criteria apply only for persistent toxic pollutants, ~~if~~ unless adopted on a segment-specific basis. The human health-organism only criteria for persistent toxic pollutants, as identified in Subsection J of 20.6.4.900 NMAC, also apply to all tributaries of waters with a designated, existing or attainable aquatic life use.

G. Unclassified Waters of the State

H. Exceptions: Numeric criteria for temperature, dissolved solids, dissolved oxygen, sediment or turbidity adopted under the Water Quality Act do not apply when changes in temperature, dissolved solids, dissolved oxygen, sediment or turbidity in a surface water of the state are attributable to:

(1) natural causes (water quality impacts from climate change including post wildfire storm flooding and discharges from municipal separate storm sewers are not covered by this exception.); or

Amigos Bravos Basis for Change for Section 20.6.4.11: *Climate change is creating massive, previously unseen, fluctuations of flow in New Mexico's rivers and streams, making it impossible to ensure that mixing zones are not harming public health or aquatic resources. If the flow in a receiving waterbody swings from large flood events to very low flows, as we can expect, and in fact are already seeing in a changing climate, it is difficult to determine the dilution factor to calculate a mixing zone. In addition, increased flooding events can result in increased pollutant loads in receiving waters from many different sources, making mixing zones all the more inappropriate. Therefore, a concrete step to make New Mexico standards more responsive to climate change is to stop allowing mixing zones. In addition, it is unclear how NMED enforces 20.6.4.11.E(5), which requires that a continuous passage either through or around a mixing where all applicable criteria are met. Again, with climate change and extreme fluctuations of flows and temperature, demonstrating this requirement is met is extremely challenging. It would be simpler, safer, and easier for both NMED and permittees to demonstrate compliance if mixing zones were eliminated entirely. Alternatively, if mixing zones aren't prohibited outright, we urge NMED to put additional limitations on mixing zones, such prohibiting mixing zones in impaired waterbodies, Outstanding Waters (ONRWs), or anywhere that domestic water supply or primary contact is designated to ensure, at the very least, these special and sensitive waters are adequately protected.*

20.6.4.12 COMPLIANCE WITH WATER QUALITY STANDARDS: The following provisions apply to determining compliance for enforcement purposes; they do not apply for purposes of determining attainment of uses. The department has developed assessment protocols for the purpose of determining attainment of uses that are available for review from the department's surface water quality bureau.

F. For compliance with ~~hardness-dependent~~ calculated numeric criteria, that depend on water chemistry, ~~hardness (as mg CaCO3/L)~~ all input parameters shall be determined from a sample taken at the same time that the sample for the contaminant is taken. If not all the input data are available to calculate a criterion, default input values may be used if justified and supported by ecoregional or other watershed data.

G. Compliance schedules may be included in NPDES permits at the time of permit renewal or modification and shall be written to require compliance at the earliest practicable time, but not longer than 5-years. Compliance schedules shall also specify milestone dates so as to measure progress towards final project completion (e.g., design completion, construction start, construction completion, date of compliance). If a permit is administratively continued, a facility with a compliance schedule must show compliance at the end of the initial 5-year permit period.

Amigos Bravos Basis for Change for Section 20.6.4.12: *We recommend putting constraints on compliance schedules to guard against overuse and abuse of this important tool. For example, we suggest adding a time limit of 5-years and requirements for revisiting compliance schedules during permit renewals. In addition, if a permit is administratively extended, any compliance*

schedule included in the permit should be reviewed 5-years after issuance of the permit.

20.6.4.13 GENERAL CRITERIA: General criteria are established to sustain and protect existing or attainable uses of surface waters of the state. These general criteria apply to all surface waters of the state at all times, unless a specified criterion is provided elsewhere in this part. Surface waters of the state shall be free of any water contaminant in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or unreasonably interfere with the public welfare or the use of property.

~~**N. Wetlands:** Only wetlands of the state are subject to this general criterion. Wetlands shall be~~ maintained and protected such that degradation through direct, indirect, or cumulative impacts does not result in the net loss of wetland acreage or biological, chemical, physical, and hydrological functions to the extent that such functions occur, as characterized by state-specific benchmarks. The functions of a wetland that are to be maintained and protected may include:

~~(1) erosion control through bank and shoreline stabilization;~~
~~(2) flood attenuation and flood protection;~~
~~(3) sediment and pollutant retention, which prevents or mitigates downstream migration;~~
~~(4) groundwater recharge and water storage for future use;~~
~~(5) low flow augmentation including baseflow maintenance;~~
~~(6) water filtration including removal or storage of nutrients and other contaminants;~~
~~(7) propagation or maintenance of aquatic and terrestrial species indigenous to wetlands;~~
~~(8) preservation of wildlife habitat including habitat for threatened or endangered species; or~~
~~(9) supporting biological diversity.~~

~~In addition, wetlands shall be suitable for recreation, wildlife habitat, and use by aquatic life and livestock.~~

Amigos Bravos Basis for Change for Section 20.6.4.13: *Amigos Bravos supports and appreciates NMED's specific proposed language for a wetland standard, however we believe that there are more appropriate places for this language. Specifically, we proposed to move this language to both the antidegradation policy (20.6.4.8 NMAC) and to a new wetland specific segment of the standards at 20.6.4.96 NMAC. We do not believe that a criterion to protect wetlands of the state belongs in the general criteria because all of the other criteria in that section are pollutants or conditions, not aquatic features or functions. The list of general criteria are often called the "free-froms", because general criteria typically call for waters to be "free-from" specific pollutants. In contrast, the proposed general criteria for wetlands outlines wetland conditions and functions that must be protected. Another concern with keeping this language in the general criteria section is that general criteria are very difficult to implement or enforce.*

20.6.4.14 SAMPLING AND ANALYSIS:

C. Sampling Procedures:

(1) Streams: Stream monitoring stations below discharges shall be located a sufficient distance downstream to ensure adequate vertical and lateral mixing.

(2) Lakes: Sampling stations in lakes shall be located at least 250 feet from a discharge.

(3) Lakes: Except for the restriction specified in Paragraph (2) of this

subsection, lake sampling stations shall be located at any site where the attainment of a water quality criterion is to be assessed. ~~Water quality measurements taken at intervals in the entire water column at a sampling station shall be averaged for the epilimnion, or in the absence of an epilimnion, for the upper one-third of the water column of the lake to determine attainment of criteria, except that attainment of criteria for toxic pollutants shall be assessed during periods of complete vertical mixing, e.g., during spring or fall turnover, or by taking depth-integrated composite samples of the water column.~~

20.6.4.15 USE ATTAINABILITY ANALYSIS:

A. Methods for developing a use attainability analysis. A use attainability analysis shall assess the physical, chemical, biological, economic or other factors affecting the attainment of a use. The analysis shall rely on scientifically defensible methods such as the methods described in the following documents:

(1) the United States environmental protection agency's water quality standards handbook and use attainability analysis website for current recommendations and case studies;

(~~1~~2) *Technical Support Manual: Waterbody Surveys And Assessments For Conducting Use Attainability Analyses*, volume I (November 1983) and volume III (November 1984) or latest editions, United States environmental protection agency, office of water, regulations and standards, Washington, D.C., for the evaluation of aquatic life or wildlife uses;

(~~2~~3) the department's *Hydrology Protocol*, latest edition, approved by the commission, for identifying ephemeral, intermittent, and perennial waters; ~~or~~

(~~3~~4) *Interim Economic Guidance For Water Quality Standards - Workbook*, March 1995, in conjunction with *Clean Water Act Financial Capability Assessment Guidance,* March 2024, United States environmental protection agency, office of water, Washington, D.C. for evaluating economic impacts; or

(5) Analysis of and analytical tools to calculate the benefits of pollution control such as:

(a) EPA's site on calculating impacts of Pollution Prevention Grants. https://www.epa.gov/p2/pollution-prevention-tools-and-calculators

(b) Benefit of Water Pollution Control on Property; Values, https://www.epa.gov/sites/default/files/2017-12/documents/ee-0009.pdf;

(c) Measuring the social benefits of water quality improvements to support regulatory objectives: Progress and future directions, https://www.pnas.org/doi/10.1073/pnas.2120247120#sec-4;

(d) A more comprehensive estimate of the value of water; or quality, https://www.sciencedirect.com/science/article/abs/pii/S0047272722000020

D. Process to amend a designated use through a use attainability analysis.

(1) The process for developing a use attainability analysis and petitioning the commission for removing a designated use and establishing the highest attainable use shall be done in accordance with the State's current *Water Quality Management Plan/Continuing Planning Process*.

(2) If the findings of a use attainability analysis, conducted by the department, in accordance with the department's *Hydrology Protocol* (latest edition) demonstrates that federal Clean Water Act Section 101(a)(2) uses, that are not existing uses, are not feasible in an ephemeral water body due to the factor in 40 CFR 131.10(g)(2), the department may consider proceeding with the expedited use attainability analysis process in accordance with the State's current *Water Quality Management Plan/Continuing Planning Process*. The following elements must be met for the expedited use attainability analysis process to be authorized and implemented:

(a) The department is the primary investigator of the use attainability

analysis;

(b) The use attainability analysis determined, through the application of the *Hydrology Protocol*, that the water being investigated is ephemeral and has no effluent discharges of sufficient volume that could compensate for the low-flow;

(c) The use attainability analysis determined that the criteria associated with the existing uses of the water being investigated are not more stringent than those in 20.6.4.97 NMAC;

(d) The designated uses in 20.6.4.97 NMAC have been determined to be the highest attainable uses for the water being analyzed;

(e) The department posted the use attainability analysis on its water quality standards website and notified its interested parties list of a 30-day public comment period;

(f) The department reviewed and responded to any comments received during the 30-day public comment period ; and

(g) The department submitted the use attainability analysis and response to comments to ~~region 6~~ EPA for technical ~~approval~~review.

(3) If EPA approves the designated use revision(s) under section 303(c) of the Clean Water Act, the water shall be subject to 20.6.4.97 NMAC for federal Clean Water Act purposes. The use attainability analysis, the technical support document, and the applicability of 20.6.4.97 NMAC to the water shall be posted on the department's water quality standards website. The department shall periodically petition the commission to list ephemeral waters under Subsection C of 20.6.4.97 NMAC and to incorporate changes to classified segments as appropriate.

E. Use attainability analysis conducted by an entity other than the department. Any person may submit notice to the department stating their intent to conduct a use attainability analysis.

(1) The ~~proponent~~ notice shall ~~provide such notice along with~~include a work plan supporting the development of a use attainability analysis ~~to~~for the department's ~~and region 6 EPA for~~ review and comment.

(2) Upon approval of the work plan by the department, ~~the proponent shall conduct~~ the use attainability analysis shall be conducted in accordance with the applicable portions of Subsections A through D of this Section and ~~implement~~ public ~~noticing~~notice provided in accordance with the approved work plan.

(3) Work plan elements. The work plan shall identify, at a minimum:

(a) the waterbody of concern and the reasoning for conducting a use attainability analysis;

(b) the source and validity of data to be used to demonstrate whether the current designated use is not attainable;

(c) the factors in 40 CFR 131.10(g) affecting the attainment of that use;

(d) a description of the data being proposed to be used to demonstrate the highest attainable use; identified and engaged;

(e) the provisions for consultation with appropriate state and federal agencies;

(f) a description of how stakeholders and potentially affected tribes will be

(g) a description of the public notice mechanisms to be employed; and

(h) the expected timelines outlining the administrative actions to be taken for a rulemaking petition, pending the outcome of the use attainability analysis.

(4) Upon completion of the use attainability analysis, ~~the proponent shall submit~~ the data, findings and conclusions shall be submitted to the department, and ~~provide~~ public notice of the use attainability analysis provided in accordance with the approved work plan.

(5) Pending the conclusions of the use attainability analysis and as described in the approved work plan, the ~~department or the proponent~~ person conducting the use attainability analysis may petition the commission to modify the designated use. ~~The cost of such use attainability analysis shall be the responsibility of the proponent. Subsequent costs associated with the administrative rulemaking process shall be the responsibility of the petitioner.~~

Amigos Bravos Basis for Change for Section 20.6.4.15: *EPA has not yet updated their Water Quality Standards Handbook. The changes proposed to three chapters in 2025 are still draft, however, Amigos Bravos agrees that reference to the handbook is appropriate.*

The references to the Interim Economic Guidance for Water Quality Standards – Workbook, March 1995 and the Clean Water Act Financial Capability Assessment Guidance, March 2024 must be qualified to indicate that those documents do not adequately include metrics or tools to calculate the benefits of controlling pollution to communities or the costs of not controlling pollution to communities. Proponents of removing designated uses must include those considerations when employing factor 40 CFR 131.10(g)(6).

Amigos Bravos recommends that the above references and/or similar state-of-the-art economic analysis and tools be included in the list of required scientifically defensible methods that shall be relied upon to develop a Use Attainability Analysis.

20.6.4.16 through 20.6.4.97 NMAC – No changes proposed

20.6.4.96 WETLANDS: All wetlands of the state, except those wetlands classified in other segments.

A. Designated uses: secondary contact, wildlife habitat, aquatic life, livestock.

B. Criteria: wetlands shall be maintained and protected such that degradation through direct, indirect, or cumulative impacts does not result in the net loss of wetland acreage or biological, chemical, physical, and hydrological functions to the extent that such functions occur, as characterized by state-specific benchmarks. The functions of a wetland that are to be maintained and protected may include: erosion control through bank and shoreline stabilization; flood attenuation and flood protection; sediment and pollutant retention, which prevents or mitigates downstream migration; groundwater recharge and water storage for future use; low flow augmentation including baseflow maintenance; water filtration including removal or storage of nutrients and other contaminants; propagation or maintenance of aquatic and terrestrial species indigenous to wetlands; preservation of wildlife habitat including habitat for threatened or endangered species; ~~or~~ supporting biological diversity; **or sequestering carbon.** The use-specific criteria in 20.6.4.900 NMAC, except for criteria set forth in Subsection I, J, K, L, are applicable to the designated uses until wetland-specific numeric criteria are developed.

Amigos Bravos Basis for Change for Section 20.6.4.96: *Amigos Bravos suggests creating a new segment for wetlands that would apply to all wetlands of the state until such a time that specific wetland segments or standards are developed for specific types of wetlands. Specifically, we recommend establishing a section for wetlands similar to those for ephemeral, intermittent, and perennial waters, that lists wetland functions, designated uses, and relevant narrative and numeric criteria to be used along with functional assessments.*

Water quality standards must provide a way to determine whether wetlands have physical, biological, or chemical impairments. The narrative general criterion lists functions, but it provides no metrics or tools for such a determination. In EPA guidance for developing wetland water quality standards and in many states, numeric criteria are identified as indicators of wetland functional

health or impairment. For example, base flow, dissolved oxygen, conductivity, pH, salinity, species diversity, water levels, and conditions such as water temperature variations, sedimentation patterns, and wetland hydroperiod can all be used to help determine quality and impacts to wetland functions. This new section will provide a way to apply a few of these parameters now and provide a place for additional parameters to be added later. In addition, this new section in the water quality standards will provide NMED the framework to assess and determine the health or impairment of wetland functions as needed for the purposes of both the biennial Integrated Report and the implementation of the state surface water permitting program.

20.6.4.98 INTERMITTENT WATERS: All non-perennial surface waters of the state, except those ephemeral waters included under section 20.6.4.97 NMAC, ~~or~~ classified in 20.6.4.101-899 NMAC, or wetlands protected under 20.6.4.~~13~~ 96 NMAC.

A. Designated uses: livestock watering, wildlife habitat, marginal warmwater aquatic life and primary contact.

B. Criteria: the use-specific criteria in 20.6.4.900 NMAC are applicable to the designated uses, except that the following site-specific criteria apply: the monthly geometric mean of E. coli bacteria 206 cfu/100 mL or less, single sample 940 cfu/100 mL or less.

20.6.4.99 PERENNIAL WATERS: All perennial surface waters of the state except those classified in 20.6.4.101-899 NMAC, or wetlands protected under 20.6.4.~~13~~ 96 NMAC.

A. Designated uses: Warmwater aquatic life, livestock watering, wildlife habitat and primary contact.

B. Criteria: The use-specific criteria in 20.6.4.900 NMAC are applicable to the designated uses, except that the following site-specific criteria apply: the monthly geometric mean of E. coli bacteria 206 cfu/100 mL or less, single sample 940 cfu/100 mL or less.

20.6.4.100 through 20.6.4.134 NMAC – No changes proposed.

20.6.4.135 RIO GRANDE BASIN: Bluewater lake and Santa Cruz lake.

A. Designated uses: coldwater aquatic life, irrigation, domestic water supply, primary contact, livestock watering and wildlife habitat.

B. Criteria: The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses except that the following segment-specific criteria apply: total phosphorus (unfiltered sample) 0.1 mg/L or less for Bluewater lake; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

Amigos Bravos Basis for Change for All Sections with a Phosphorus Standard: *There is inconsistency in the terms used for phosphorus throughout NMAC 20.6.4 and the proposed amendments. Please use the term "total phosphorus" throughout the document instead of "phosphorus" in some sections, and "total phosphorus" in other sections. For example, 20.6.4.318 Canadian River Basin: Doggett Creek specifies "total phosphorus" in the pollutant and highest attainable condition, but in several sections including 20.6.4.135 Rio Grande Basin: Bluewater Lake, the term "phosphorus" is used and we have confirmed with NMED staff that this is referring to total phosphorus. We have adjusted the amendments document to show where this should be modified in green underlines. There are six more places in NMAC 20.4.6 NMAC that weren't included for amendments in NMED's proposal that need the term "phosphorus" changed to "total phosphorus". Instead of pasting them all in this document we have identified them here: are sections: 20.6.4.109; 20.6.4.123;20.6.4.129; 20.6.4.223; 20.6.4.403; 20.6.4.406, and 20.6.4.40.*

20.6.4.206 PECOS RIVER BASIN: Perennial reaches of the Rio Felix ~~and perennial reaches of tributaries to the Rio Hondo downstream of Bonney canyon, excluding North Spring river~~.

A. Designated uses: irrigation, livestock watering, wildlife habitat, secondary contact and warmwater aquatic life.

B. Criteria:

(1) The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

(2) At all flows above 50 cfs: TDS 14,000 mg/L or less, sulfate 3,000 mg/L or less and chloride 6,000 mg/L or less.

20.6.4.207 NMAC – No changes proposed.

20.6.4.208 PECOS RIVER BASIN: Perennial reaches of the Rio Peñasco above ~~state highway 24 near Dunken~~Bear Canyon, perennial reaches of tributaries to the Rio Peñasco above ~~state highway 24 near Dunken~~Bear Canyon, perennial reaches of Cox canyon, perennial reaches of the Rio Bonito downstream from ~~state highway 48 (near~~ Angus canyon), the Rio Ruidoso downstream of ~~the U.S. highway 70 bridge~~Palo Verde canyon near Seeping Springs lakes, perennial reaches of the Rio Hondo upstream from Bonney canyon and perennial reaches of Agua Chiquita.

A. Designated uses: fish culture, irrigation, livestock watering, wildlife habitat, coldwater aquatic life and primary contact.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: temperature 30°C (86°F) or less, and total phosphorus (unfiltered sample) less than 0.1 mg/L.

20.6.4.209 PECOS RIVER BASIN: Perennial reaches of Eagle creek upstream of Alto dam to the Mescalero Apache boundary, perennial reaches of the Rio Bonito upstream of ~~state highway 48 (near~~ Angus canyon) excluding Bonito lake, perennial reaches of tributaries to the Rio Bonito upstream of ~~state highway~~ ~~48 (near~~ Angus canyon), perennial reaches of the Rio Ruidoso upstream of ~~the U.S. highway 70 bridge~~Palo Verde canyon near Seeping Springs lakes above and below the Mescalero Apache boundary and perennial reaches of tributaries to the Rio Ruidoso upstream of ~~the U.S. highway 70 bridge~~Palo Verde canyon near Seeping Springs lakes above and below the Mescalero Apache boundary.

A. Designated uses: domestic water supply, high quality coldwater aquatic life, irrigation, livestock watering, wildlife habitat, public water supply and primary contact.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 600 µS/cm or less in Eagle creek, 1,100 µS/cm or less in Bonito creek and 1,500 µS/cm or less in the Rio Ruidoso; total phosphorus (unfiltered sample) less than 0.1 mg/L; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

20.6.4.210 through 20.6.4.212 NMAC – No changes proposed.

20.6.4.213 PECOS RIVER BASIN: McAllister lake.

A. Designated uses: coldwater aquatic life, ~~secondary~~ primary contact, livestock watering and wildlife habitat.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: temperature 25°C (77°F) or less.

20.6.4.214 through 20.6.4.218 NMAC – No changes proposed.

20.6.4.219 PECOS RIVER BASIN: Avalon reservoir.

A. Designated uses: irrigation storage, livestock watering, wildlife habitat, ~~secondary~~ primary contact and warmwater aquatic life.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

20.6.4.220 through 20.6.4.230 NMAC – No changes proposed.

20.6.4.231 PECOS RIVER BASIN: The main stem of the Pecos river from the headwaters of Brantley reservoir upstream to Salt creek (near Acme), perennial reaches of the Rio Peñasco downstream from ~~state highway 24 near Dunken~~ Bear canyon, ~~perennial reaches of North Spring river and~~ perennial reaches of the Rio Hondo and perennial reaches of its tributaries downstream of Bonney canyon.

A. Designated uses: irrigation, livestock watering, wildlife habitat, primary contact and warmwater aquatic life.

B. Criteria:

(1) The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

(2) At all flows above 50 cfs: TDS 14,000 mg/L or less, sulfate 3,000 mg/L or less and chloride 6,000 mg/L or less.

20.6.4.232 through 20.6.4.306 NMAC – No changes proposed.

20.6.4.307 CANADIAN RIVER BASIN: Perennial reaches of the Mora river from the USGS gaging station near Shoemaker upstream to the state highway 434 bridge in Mora, all perennial reaches of tributaries to the Mora river downstream from the USGS gaging station at La Cueva in San Miguel and Mora counties except ~~lakes~~ waters identified in 20.6.4.309 NMAC or 20.6.4.313 NMAC, perennial reaches of Ocate creek downstream of Ocate, perennial reaches of tributaries to Ocate creek downstream of Ocate, and perennial reaches of Rayado creek downstream of Miami lake diversion in Colfax county.

A. Designated uses: marginal coldwater aquatic life, warmwater aquatic life, primary contact, irrigation, livestock watering and wildlife habitat.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

20.6.4.308 CANADIAN RIVER BASIN: Charette lakes.

A. Designated uses: coldwater aquatic life, warmwater aquatic life, ~~secondary~~ primary contact, livestock watering and wildlife habitat.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

20.6.4.309 CANADIAN RIVER BASIN: The Mora river and perennial reaches of its tributaries upstream from the state highway 434 bridge in Mora except lakes identified in 20.6.4.313 NMAC, all perennial reaches of tributaries to the Mora river upstream from the USGS gaging station at La Cueva, perennial reaches of Coyote creek, upstream of Amola ridge and perennial reaches of tributaries to Coyote creek upstream to Amola ridge, the Cimarron river above state highway 21 in Cimarron, perennial reaches of tributaries to the Cimarron river above state highway 21 in Cimarron except Eagle Nest

lake, all perennial reaches of tributaries to the Cimarron river north and northwest of highway 64 except north and south Shuree ponds, perennial reaches of Rayado creek above Miami lake diversion, perennial reaches of tributaries to Rayado creek above Miami lake diversion, Ocate creek and perennial reaches of its tributaries upstream of Ocate, perennial reaches of the Vermejo river upstream from Rail canyon and all other perennial reaches of tributaries to the Canadian river northwest and north of U.S. highway 64 in Colfax county unless included in other segments.Designated uses: domestic water supply, irrigation, high quality coldwater aquatic life, livestock watering, wildlife habitat, and primary contact; and public water supply on the Cimarron river upstream from Cimarron, on perennial reaches of Rayado creek and on perennial reaches of tributaries to Rayado creek.

A. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 500 µS/cm or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

20.6.4.310 through 20.6.4.317 NMAC – No changes proposed.

20.6.4.318 CANADIAN RIVER BASIN: Doggett creek.

A. Designated uses: Warm water aquatic life, livestock watering, wildlife habitat and primary contact.

B. Criteria: The use-specific criteria in 20.6.4.900 NMAC are applicable to the designated uses,
except that the following site-specific criteria apply: the monthly geometric mean of E. coli bacteria 206 cfu/100 mL or less, single sample 940 cfu/100 mL or less.

C. Discharger-specific temporary standard:

(1) Discharger: City of Raton wastewater treatment plant

(2) NPDES permit number: NM0020273, Outfall 001

(3) Receiving waterbody: Doggett creek, 20.6.4.318 NMAC

(4) Discharge latitude/longitude: 36° 52' 13.91" N / 104° 25' 39.18" W

(5) Pollutant(s): nutrients; total nitrogen and total phosphorus

(6) Factor of issuance: substantial and widespread economic and social impacts (40 CFR
131.10(g)(6))

(7) Highest attainable condition: interim effluent condition of 8.0 mg/L total nitrogen and
1.6 mg/L total phosphorus as 30-day averages. The highest attainable condition shall be either the highest attainable condition identified at the time of the adoption, or any higher attainable condition later identified during any reevaluation, whichever is more stringent (40 CFR 131.14(b)(1)(iii)).

(8) Effective date of temporary standard: ~~This temporary standard becomes~~ effective for Clean Water Act purposes on ~~the date of EPA approval~~ July 24, 2020.

(9) Expiration date of temporary standard: no later than 20 years from the effective date.

(10) Reevaluation period: at each succeeding review of water quality standards and at least once every five years from the effective date of the temporary standard (Paragraph (8) of Subsection H of 20.6.4.10 NMAC, 40 CFR 131.14(b)(1)(v)). If the discharger cannot demonstrate that sufficient progress has been made the commission may revoke approval of the temporary standard or provide additional conditions to the approval of the temporary standard. If the reevaluation is not completed at the frequency specified or the Department does not submit the reevaluation to EPA within 30 days of completion, the underlying designated use and criterion will be the applicable water quality standard for Clean

Water Act purposes until the Department completes and submits the reevaluation to EPA. Public input on the reevaluation will be invited during NPDES permit renewals or triennial reviews, as applicable, in accordance with the State's most current approved water quality management plan and continuing planning process.

(11) Timeline for proposed actions. Tasks and target completion dates are listed in the most recent, WQCC-approved version of the New Mexico Environment Department, Surface Water Quality Bureau's "Nutrient Temporary Standards for City of Raton Wastewater Treatment Plant, NPDES No. NM0020273 to Doggett Creek.".

20.6.4.319 through 20.6.4.402 NMAC – No changes proposed.

20.6.4.403 SAN JUAN RIVER BASIN: The Animas river from its confluence with the San Juan river upstream to Estes arroyo.

A. Designated uses: Public water supply, industrial water supply, irrigation, livestock watering, wildlife habitat, coolwater aquatic life, and primary contact.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses~~, except that the following segment-specific criterion applies: temperature 29°C (84.2°F) or less~~.

20.6.4.404 through 20.6.4.501 NMAC – No changes proposed.

20.6.4.502 GILA RIVER BASIN: The main stem of the Gila river from Redrock canyon upstream to the confluence of the West Fork Gila river and East Fork Gila river and perennial reaches of tributaries to the Gila river downstream of Mogollon creek.

A. Designated uses: industrial water supply, irrigation, livestock watering, wildlife habitat, marginal coldwater aquatic life, and primary contact~~ and warmwater aquatic life~~.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: 28°C (82.4°F) or less.

20.6.4.503 GILA RIVER BASIN: All perennial tributaries to the Gila river upstream of and including Mogollon creek.

A. Designated uses: domestic water supply, high quality coldwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance of 400 µS/cm or less for all perennial tributaries except West Fork Gila and tributaries thereto, specific conductance of 300 µS/cm or less; ~~32.2~~ 29°C (~~90~~84°F) or less in the east fork of the Gila river and Sapillo creek downstream of Lake Roberts; the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

20.6.4.504 through 20.6.4.600 NMAC – No changes proposed.

20.6.4.601 SAN FRANCISCO RIVER BASIN: The main stem of the San Francisco river from the New Mexico-Arizona line upstream to~~ state highway 12 at Reserve~~ the confluence with Largo canyon and perennial reaches of Mule creek.

A. Designated uses: irrigation,~~ marginal warmwater and~~ marginal coldwater aquatic life, livestock watering, wildlife habitat and primary contact.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

20.6.4.602 SAN FRANCISCO RIVER BASIN: The main stem of the San Francisco river from ~~state highway 12 at Reserve~~ the confluence with Largo canyon upstream to the New Mexico-Arizona line.

A. Designated uses: coldwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: temperature 25°C (77°F) or less.

20.6.4.603 through 20.6.4.899 NMAC – No changes proposed.

20.6.4.900 CRITERIA APPLICABLE TO EXISTING, DESIGNATED OR ATTAINABLE USES UNLESS OTHERWISE SPECIFIED IN 20.6.4.9~~7~~ 96 THROUGH 20.6.4.899 NMAC:

20.6.4.900.A through 20.6.4.900.C NMAC – No changes proposed.

D. Primary contact: The monthly geometric mean of E. coli bacteria of 126 cfu/100 mL or MPN/100 ml, a single sample of E. coli bacteria of 410 cfu/100 mL or MPN/100 mL, a single sample of total microcystins of 8 µg/L ~~with no more than three exceedances within a 12-month period~~ and a single sample of cylindrospermopsin of 15 µg/L ~~with no more than three exceedances within a 12-month period~~, and pH within the range of 6.6 to 9.0 apply to this use. The results for *E. coli* may be reported as either colony forming units (CFU) or the most probable number (MPN) depending on the analytical method used.

20.6.4.900.E through 20.6.4.900.G NMAC – No changes proposed.

H. Aquatic life: Surface waters of the state with a designated, existing or attainable use of aquatic life shall be free from any substances at concentrations that can impair the community of plants and animals in or the ecological integrity of surface waters of the state. Except as provided in Paragraph (7) of this subsection, the acute and chronic aquatic life criteria set out in Subsections I, J, K and L of this section and the human health- organism only criteria set out in Subsection J of this section are applicable to all aquatic life use subcategories. Total phosphorus (unfiltered sample) of .1mg/L apply to all surface waters of the state with a designated, existing or attainable use of aquatic life. In addition, the specific criteria for aquatic life subcategories in the following paragraphs apply to waters classified under the respective designations.

Amigos Bravos Comments and Basis for Change for Section 20.6.4.900.H NMAC: *While we commend the NMED for their current total phosphorous numeric standards of 0.1mg/L (100ug/L) for several specific water segments, all surface waters of the State should be monitored for total phosphorus levels in order to reduce the occurrences of eutrophication, low dissolved oxygen, and harmful algal blooms. We request that the NMED establish a 0.1mg/L (100ug/L), or similar, standard for total phosphorus in all surface waters of New Mexico to support the aquatic life use. This request is supported by the fact that phosphorus is the limiting nutrient for plant and algal growth in most freshwater systems, and research has shown that concentrations between 0.05 and 0.1mg/L can indicate eutrophic waters. Several scientific studies provide evidence for the link between total phosphorus levels and eutrophication in specific ecosystems, including:*

> ***ACS Publications (2016):*** *An article in Environmental Science & Technology titled "Reducing Phosphorus to Curb Lake Eutrophication is a Success" reviews case studies, including chemical treatment of lakes, that demonstrate controlling phosphorus is key to reversing eutrophication.*

In one example, total phosphorus declined from 500 to 30–40 µg/L (0.5 to 0.03-0.04mg/L) after treatment, suggesting a significant ecological response to low concentrations.

Elsevier (2024): *A study on wetlands in the UK found that total phosphorus concentrations frequently exceeded the Common Standards Monitoring (CSM) environmental quality standard of 0.1 mg/L, with significant spikes that may have adverse biological impacts. This research highlighted how exceeding this threshold can lead to ecological damage.*

We request that the NMED look to Minnesota and Wisconsin for examples of approaches to establish total phosphorus standards in all streams and lakes in New Mexico.

Minnesota has set numeric criteria for total phosphorus in streams ranging from 0.05mg/L (50ug/L) for northern streams to 0.15mg/L (150ug/L) for southern streams. For lakes, the range is from 0.012mg/L (12ug/L) to 0.09mg/L (90 ug/L).

Wisconsin has a similar set of criteria, with stream criteria ranging from 0.075mg/L (75ug/L) to 0.1mg/L (100ug/L) based on stream classification. For lakes, the criteria range from 0.015mg/L (15ug/L) to 0.04mg/L (40ug/L).

(1) **High quality coldwater:** dissolved oxygen 6.0 mg/L or more, 4T3 temperature 20°C (68°F), maximum temperature 23°C (73°F), pH within the range of 6.6 to 8.8 and specific conductance a segment- specific limit between 300 µS/cm and 1,500 µS/cm depending on the natural background in the particular surface water of the state (the intent of this criterion is to prevent excessive increases in dissolved solids which would result in changes in community structure). Where a single segment-specific temperature criterion is indicated in 20.6.4.101-899 NMAC, it is the maximum temperature and no 4T3 temperature applies.

(2) **Coldwater:** dissolved oxygen 6.0 mg/L or more, 6T3 temperature 20°C (68°F), maximum temperature 24°C (75°F) and pH within the range of 6.6 to 8.8. Where a single segment-specific temperature criterion is indicated in 20.6.4.101-899 NMAC, it is the maximum temperature and no 6T3 temperature applies.

(3) **Marginal coldwater:** dissolved oxygen 6 mg/L or more, 6T3 temperature 25°C (77°F), maximum temperature 29°C (84°F) and pH within the range from 6.6 to 9.0. Where a single segment-specific temperature criterion is indicated in 20.6.4.101-899 NMAC, it is the maximum temperature and no 6T3 temperature applies.

(4) **Coolwater:** dissolved oxygen 5.0 mg/L or more, maximum temperature 29°C (84°F) and pH within the range of 6.6 to 9.0.

(5) **Warmwater:** dissolved oxygen 5 mg/L or more, maximum temperature 32.2°C (90°F) and pH within the range of 6.6 to 9.0. Where a segment-specific temperature criterion is indicated in 20.6.4.101-899 NMAC, it is the maximum temperature.

(6) **Marginal warmwater:** dissolved oxygen 5 mg/L or more, pH within the range of 6.6 to 9.0 and temperatures that may routinely exceed 32.2°C (90°F). Where a segment-specific temperature criterion is indicated in 20.6.4.101-899 NMAC, it is the maximum temperature.

(7) **Limited aquatic life:** pH within the range of 6.0 to 9.0. The acute aquatic life criteria of Subsections I and J of this section apply to this subcategory. Chronic aquatic life criteria do not apply unless adopted on a segment-specific basis. Human health-organism only criteria apply only for persistent toxic pollutants unless adopted on a segment-specific basis.

20.6.4.900.I NMAC – No changes proposed.

J. Use-specific numeric criteria.

(1) Table of numeric criteria: The following table sets forth the numeric criteria in µg/L, unless otherwise indicated, applicable to existing, designated and attainable uses. For metals, criteria represent the total sample fraction unless otherwise specified in the table. Additional criteria that are not compatible with this table are found in Subsections A through I and K through M of 20.6.4.900 NMAC.

Pollutant	**CAS Number**	**DWS**	**Irr/Irr storage**	**LW**	**WH**	**Aquatic Life**			**Type**
						Acute	Chronic	HH-OO	
Aluminum, dissolved	7429-90-5		5,000			750 ~~i~~h	87 ~~i~~h		
Aluminum, total recoverable	7429-90-5					a	a		
Antimony, dissolved	7440-36-0	6						640	P
Arsenic, dissolved	7440-38-2	10	100	200		340	150	9.0	C,P
Asbestos (fibers/L)	1332-21-4	~~7,000,000 fibers / L~~ 7.0E06							
Barium, dissolved	7440-39-3	2,000							
Beryllium, dissolved	7440-41-7	4							
Boron, dissolved	7440-42-8		750	5,000					
Cadmium, dissolved	7440-43-9	5	10	50		a	a		
Chloride	1688-70-06					~~860,000~~ 8.6E05	~~230,000~~ 2.3E05		
Chlorine residual	7782-50-5				11	19	11		

						Aquatic Life	

Pollutant	**CAS Number**	**DWS**	**Irr/Irr storage**	**LW**	**WH**	Acute	Chronic	HH-OO	**Type**
Chromium III, dissolved	16065-83-1					a	a		
Chromium VI, dissolved	18540-29-9					16	11		
Chromium, dissolved	7440-47-3	100	100	1,000					
Cobalt, dissolved	7440-48-4		50	1,000					
Copper, dissolved	7440-50-8	1300	200	500		a	a		
Cyanide, total recoverable	57-12-5	200			5.2	22.0	5.2	400	
Iron	7439-89-6						1,000		
Lead, dissolved	7439-92-1	~~15~~10	5,000	100		a	a		
Manganese, dissolved	7439-96-5					a	a		
Mercury	7439-97-6	2		10	0.77				P
Mercury, dissolved	7439-97-6					1.4	0.77		P
Methylmercury	22967-92-6							0.3 mg/kg in fish tissue	P
Molybdenum, dissolved	7439-98-7		1,000						
Molybdenum, total recoverable	7439-98-7					7,920	1,895		
Nickel, dissolved	7440-02-	700				a	a	4,600	P

	0								
Nitrate as N (mg/L)		10 ~~mg/L~~				3			
Nitrite + Nitrate (mg/L)				132 ~~mg/L~~					
Selenium, dissolved	7782-49-2	50	b	50			1.5 in lentic water, i 3.1 in lotic water, i	4,200	P
Selenium, total recoverable	7782-49-2				5.0	~~20.0~~	~~5.0~~ 8.5 mg/kg Dry Weight in Whole- Body Fish Tissue 11.3 mg/kg Dry Weight in Fish Muscle Tissue		
Silver, dissolved	7440-22-4					a			
Thallium, dissolved	7440-28-0	2						0.47	P

Pollutant	**CAS Number**	**DWS**	**Irr/Irr storage**	**LW**	**WH**	**Aquatic Life**			**Type**
						Acute	Chronic	HH-OO	
Uranium, dissolved	7440-61-1	30							
Vanadium, dissolved	7440-62-2		100	100					P
Zinc, dissolved	7440-66-6	10,500	2,000	25,000		a	a	26,000	P
Adjusted gross alpha (pCi/L)		15 ~~pCi/L~~		15 ~~pCi/L~~					

Radium 226 + Radium 228 (pCi/L)		5 ~~pCi/L~~		30.0 ~~pCi/L~~					
Strontium 90 (pCi/L)		8 ~~pCi/L~~							
Tritium (pCi/L)		20,000 ~~pCi/L~~		20,000 ~~pCi/L~~					
Acenaphthene	83-32-9	2,100						90	
Acrolein	107-02-8	18				3.0	3.0	400	
Acrylonitrile	107-13-1	0.65						70	C
Aldrin	309-00-2	0.021				3.0		~~0.000007~~ 7.7E-06	C,P
Anthracene	120-12-7	10,500						400	
Benzene	71-43-2	5						160	C
Benzidine	92-87-5	0.0015						0.11	C
Benzo(a)anthracene	56-55-3	0.048						0.013	C, P
Benzo(a)pyrene	50-32-8	0.2						0.0013	C,P
Benzo(b)fluoranthene	205-99-2	0.048						0.013	C, P
Benzo(k)fluoranthene	207-08-9	0.048						0.13	C, P
alpha-BHC	319-84-6	0.056						0.0039	C
beta-BHC	319-85-7	0.091						0.14	C
gamma-BHC (Lindane)	58-89-9	0.20				0.95		4.4	
Bis(2-chloroethyl) ether	111-44-4	0.30						22	C
Bis(2-chloro-1-methylethyl) ether	108-60-1	1,400						4,000	
Bis(2-ethylhexyl) phthalate	117-81-7	6						3.7	C
Bis(chloromethyl) ether	542-88-1							0.17	C
Bromoform	75-25-2	44						1,200	C
Butylbenzyl phthalate	85-68-7	7,000						1	C
Carbaryl	63-25-2					2.1	2.1		
Carbon tetrachloride	56-23-5	5						50	C
Chlordane	57-74-9	2				2.4	0.0043	0.0032	C,P
Chlorobenzene	108-90-	100						800	

	7								
Chlorodibromomethane	124-48-1	4.2						210	C
Chloroform	67-66-3	57						2,000	
Chlorpyrifos	2921-88-2					0.083	0.041		P
2-Chloronaphthalene	91-58-7	2,800						1,000	
2-Chlorophenol	95-57-8	175						800	
Chrysene	218-01-9	0.048						1.3	C, P
Demeton	8065-48-3						0.1		
Diazinon	333-41-5					0.17	0.17		

Pollutant	**CAS Number**	**DWS**	**Irr/Irr storage**	**LW**	**WH**	**Aquatic Life**			**Type**
						Acute	Chronic	HH-OO	
2,4-Dichlorophenoxyacetic acid (2,4-D)	94-75-7	70						12,000	
Dichlorodiphenyldichloroet- hane (DDD)	72-54-8							0.0012	C
Dichlorodiphenyldichloroet- hylene (DDE)	72-55-9							0.00018	C
Dichlorodiphenyltrichloroe- thane (DDT)	50-29-3							0.0003	C,P
4,4'-DDT and derivatives		1.0			0.001	1.1	0.001		P
Dibenzo(a,h)anthracene	53-70-3	0.048						0.0013	C, P
Dibutyl phthalate	84-74-2	3,500						30	
1,2-Dichlorobenzene	95-50-1	600						3,000	
1,3-Dichlorobenzene	541-73-1	469						10	
1,4-Dichlorobenzene	106-46-7	75						900	
3,3'-Dichlorobenzidine	91-94-1	0.78						1.5	C
Dichlorobromomethane	75-27-4	5.6						270	C
1,2-Dichloroethane	107-06-2	5						6,500	C
1,1-Dichloroethylene	75-35-4	7						20,000	
2,4-Dichlorophenol	120-83-	105						60	

	2								
1,2-Dichloropropane	78-87-5	5.0						310	C
1,3-Dichloropropene	542-75-6	3.5						120	C
Dieldrin	60-57-1	0.022				0.24	0.056	~~0.000012~~ 1.2E-05	C,P
Diethyl phthalate	84-66-2	28,000						600	
Dimethyl phthalate	131-11-3	~~350,000~~ 3.5E05						2,000	
2,4-Dimethylphenol	105-67-9	700						3,000	
Dinitrophenols	25550-58-7							1,000	
2,4-Dinitrophenol	51-28-5	70						300	
2,4-Dinitrotoluene	121-14-2	1.1						17	C
Dioxin	1746-01-6	3.0E-05						5.1E-08	C,P
1,2-Diphenylhydrazine	122-66-7	0.44						2.0	C
alpha-Endosulfan	959-98-8	62				0.22	0.056	30	
beta-Endosulfan	33213-65-9	62				0.22	0.056	40	
Endosulfan sulfate	1031-07-8	62						40	
Endrin	72-20-8	2				0.086	0.036	0.03	P
Endrin aldehyde	7421-93-4	10.5						1	
Ethylbenzene	100-41-4	700						130	
Fluoranthene	206-44-0	1,400						20	P
Fluorene	86-73-7	1,400						70	
Guthion	86-50-0						0.01		
Heptachlor	76-44-8	0.40				0.52	0.0038	~~0.000059~~ 5.9E-05	C, P

Pollutant	CAS Number	DWS	Irr/Irr storage	LW	WH	Aquatic Life			Type
						Acute	Chronic	HH-OO	
Heptachlor epoxide	1024-57-3	0.20				0.52	0.0038	0.00032	C
Hexachlorobenzene	118-74-1	1						0.00079	C,P
Hexachlorobutadiene	87-68-3	4.5						0.1	C, P
Hexachlorocyclohexane (HCH)-Technical	608-73-1							0.1	C
Hexachlorocyclopentadiene	77-47-4	50						4	
Hexachloroethane	67-72-1	25						1	C
Indeno(1,2,3-cd)pyrene	193-39-5	0.048						0.013	C, P
Isophorone	78-59-1	368						18,000	C
Malathion	121-75-5						0.1		
Methoxychlor	72-43-5	40					0.03	0.02	P
Methyl bromide	74-83-9	49						10,000	
3-Methyl-4-chlorophenol	59-50-7							2,000	
2-Methyl-4,6-dinitrophenol	534-52-1	14						30	
Methylene chloride	75-09-2	5						10,000	C
Mirex	2385-85-5						0.001		P
Nitrobenzene	98-95-3	18						600	
Nitrosamines	Various							12.4	C
Nitrosodibutylamine	924-16-3							2.2	C
Nitrosodiethylamine	55-18-5							12.4	C
N-Nitrosodimethylamine	62-75-9	0.0069						30	C
N-Nitrosodi-n-propylamine	621-64-7	0.050						5.1	C
N-Nitrosodiphenylamine	86-30-6	71						60	C
N-Nitrosopyrrolidine	930-55-							340	C

	2								
Nonylphenol	84852-15-3					28	6.6		
Parathion	56-38-2					0.065	0.013		
Pentachlorobenzene	608-93-5							0.1	
Pentachlorophenol	87-86-5	1.0				19	15	0.4	C
Perfluorooctane sulfonate (PFOS)	Various					71	0.25 in water 0.028 mg/kg Wet Weight in Invertebrate Whole-Body Tissue 0.201 mg/kg Wet Weight in Fish Whole-Body Tissues 0.087 mg/kg Wet Weight in Fish Muscle Tissue	7e-5	P

Pollutant	CAS Number	DWS	Irr/Irr storage	LW	WH	Aquatic Life			Type
						Acute	Chronic	HH-OO	
Perfluorooctanoic							100 in water 1.18 mg/kg Wet Weight in Invertebrate Whole-Body Tissue	3.6e-6	

acid (PFOA)	Various					3,100	6.49 mg/kg Wet Weight Fish Whole-Body Tissue 0.133 mg/kg Wet Weight Fish Muscle Tissue		P
Perfluorobutane sulfonate (PFBS)	Various							0.5	
Phenol	108-95-2	10,500						~~300,000~~ 3.0E05	
Polychlorinated Biphenyls (PCBs)	1336-36-3	0.50			0.014	2	0.014	0.00064	C,P
Pyrene	129-00-0	1,050						30	
1,2,4,5-Tetrachlorobenzene	95-94-3							0.03	
1,1,2,2-Tetrachloroethane	79-34-5	1.8						30	C
Tetrachloroethylene	127-18-4	5						290	C,P
Toluene	108-88-3	1,000						520	
Toxaphene	8001-35-2	3				0.73	0.0002	0.0071	C, P
1,2-Trans-dichloroethylene	156-60-5	100						4,000	
Tributyltin (TBT)	Various					0.46	0.072		
1,2,4-Trichlorobenzene	120-82-1	70						0.76	C
1,1,1-Trichloroethane	71-55-6	200						~~200,000~~ 2.0E05	
1,1,2-Trichloroethane	79-00-5	5						89	C
Trichloroethylene	79-01-6	5						70	C
2,4,5-Trichlorophenol	95-95-4							600	
2,4,6-Trichlorophenol	88-06-2	32						28	C
2-(2,4,5-Trichlorophenoxy)propi	93-72-1	50						400	

onic acid (Silvex)									
Vinyl chloride	75-01-4	2						16	C

(2) Notes applicable to the table of numeric criteria in Paragraph (1) of this subsection.

(a) Where the letter "a" is indicated in a cell, the criterion is based on receiving water characteristics and can be referenced in Subsection I of 20.6.4.900 NMAC.

(b) Where the letter "b" is indicated in a cell, the criterion can be referenced in Subsection C of 20.6.4.900 NMAC.

(c) Criteria are in µg/L unless otherwise indicated.

(~~d~~c) Abbreviations are as follows: CAS - chemical abstracts service (see definition for "CAS number" in 20.6.4.7 NMAC); DWS - domestic water supply; Irr/Irr storage- irrigation and irrigation storage; LW - livestock watering; WH - wildlife habitat; HH-OO - human health-organism only; C – criteria based on cancer-causing endpoint; P - persistent toxic pollutant.

(~~e~~d) The criteria are based on analysis of an unfiltered sample unless otherwise indicated. The acute and chronic aquatic life criteria for aluminum are based on analysis of total recoverable aluminum in a sample that is filtered to minimize mineral phases as specified by the department.

(~~f~~e) The criteria listed under human health-organism only (HH-OO) are intended to protect human health when aquatic organisms are consumed from waters containing pollutants. These criteria do not protect the aquatic life itself; rather, they protect the health of humans who ingest fish or other aquatic organisms.

(~~g~~f) The dioxin criteria apply to the sum of the dioxin toxicity equivalents expressed as 2,3,7,8-TCDD dioxin.

(~~h~~g) The criteria for polychlorinated biphenyls (PCBs) apply to the sum of all congeners, to the sum of all homologs or to the sum of all aroclors.

(~~i~~h) The acute and chronic aquatic life criteria for dissolved aluminum only apply when the concurrent pH is less than 6.5 or greater than 9.0 S.U. If the concurrent pH is between 6.5 and 9.0 S.U. then the hardness-dependent total recoverable aluminum criteria in Paragraphs (1) and (2) of Subsection I of 20.6.4.900 NMAC apply.

(h) Selenium water column criteria include 30-day mean dissolved selenium concentrations for lentic systems, including lakes and impoundments, and lotic systems, including rivers and streams.

Amigos Bravos Comments and Basis for Change for Section 20.6.4.900.J:

Comments and basis related to PFAS:

Amigos Bravos applauds and supports NMED's proposal to adopt PFAS standards. In addition, we recommend NMED add to their petition the numeric human health criteria proposed by EPA in December 2024 for PFOA, PFOS and PFBS.

PFOA, PFOS, PFBS, and thousands more compounds belong to a large class of synthetic chemicals known as per- and polyfluoroalkyl substances, or PFAS. PFAS contamination is a major water quality issue facing New Mexico that has resulted in economic losses to our state's dairy industry and substantial impacts to public health and wildlife populations. Developing standards

for PFAS chemicals is essential to protect New Mexico's surface water resources.

Amigos Bravos Comments and Basis for Change for Nitrate as N:
Strong nutrient standards are vital for protecting surface from eutrophication, harmful algae blooms, low dissolved oxygen levels, loss of biodiversity, contaminated drinking water, risks to human health, and economic losses in tourism and property values. The following comments focus on changes to the NMAC 20.6.4 that we believe would strengthen the State's ability to keep nutrient levels low in New Mexico's waters.

There is considerable science suggesting that the drinking water standard should be below 10mg/L, and that the water quality standard to protect aquatic life in surface water should be to 3mg/L as an indicator of potential pollution and environmental risk. We request that the NMED propose a numeric Nitrate as N standard of 3mg/L on all surface waters in New Mexico that have an aquatic life use. The following review peer-reviewed articles are just a few examples of data over the last 25 years to support this request:

i. ***Weyer et al. (2001)**: A groundbreaking study in the Environmental Health Perspectives journal showed an increased risk of bladder and ovarian cancer in older women drinking public drinking water with long-term average nitrate levels exceeding 2.46 mg/L (NO3-N), well below the 10 mg/L regulatory limit.*

ii. ***Dubrovsky et al. (2010)**: A national USGS study found that nitrate concentrations over 1 mg/L in groundwater were indicative of human activity and supported the idea that a 3 mg/L benchmark is a common threshold that signals a departure from natural background levels.*

iii. ***Ward et al. (2018)**: This updated review in the International Journal of Environmental Research and Public Health synthesizes numerous studies examining the health effects of drinking water nitrate, confirming associations with conditions like colorectal cancer, thyroid disease, and birth defects, even at levels below the current 10mg/L limit.*

iv. ***Springer study (2021)**: The paper "Fertilizers and nitrate pollution of surface and ground water" details how increases in nitrogen flow from human sources drive coastal eutrophication, which threatens biodiversity and fisheries.*

Comments related to the need to adopt standards for constituents found in produced water:
With the passage of HB 546 and recent rulemakings considering the discharge of treated produced water to our state's surface water resources, it is imperative that NMED take steps to identify and propose numeric criteria for the numerous contaminants that do not currently have numeric water quality criteria standards in 20.6.4 NMAC. We urge NMED to look at the list submitted by the Environmental Defense Fund ("EDF") on 12/9/20, as part of the triennial review comment period for the 2020 Triennial Review, to see if there are available data and information that would enable NMED to propose criteria for toxic pollutants found in produced water for which we currently do not have a standard. EDF's 2020 comments clearly outline the need and the ability to adopt standards for toxic pollutants found in produced water:

> *Through an extensive literature review, EDF has identified approximately 1,360 chemicals that can be found in produced water nationally and therefore have the potential to be found in New Mexico produced waters. An estimated*

> *88 of those already have New Mexico surface water quality standards that could be immediately applied in a potential pilot testing or preliminary permitting program. Of the remainder, about 180 chemicals…… have an approved standard method associated with them, and toxicity values that could be used to conduct human health or aquatic life risk assessments that are the prelude to developing water quality criteria to adopt into a WQS. In other words, EDF estimates that at least 180 potential produced water chemicals have the type of tools and data necessary to begin a process of considering associated water quality criteria and standard updates today.*

On January 6, 2021, twenty NGO groups - many of whom have signed onto this letter - cited the EDF comment letter and called on NMED in to develop standards for toxic pollutants found in produced water.

It is through the development and adoption of specific criteria for the toxic substances typically found in produced water that we will get closer to safely discharging treated produced water, a goal that has been repeatedly expressed by this state administration. If the state is serious about discharging produced water to our surface waters, then the appropriate water quality criteria must be developed and adopted.

Specifically, as outlined in EDF's letter, there are data available, including in many cases approved analytical methods for developing standards for 180 constituents found in produced water for which New Mexico currently does not have standards. While we realize that developing numeric criteria can be a long and arduous process, it is essential that the standards are robust enough to protect the existing and designated uses of New Mexico's water resources before produced water is discharged into surface waterbodies. To help identify priority pollutants among the 180 identified by EDF, more work should be done to characterize produced water in New Mexico.

Amigos Bravos recommends that NMED identify several constituents found in produced water in New Mexico for which there are available data for inclusion in 20.6.4.900 NMAC during the 2026 Triennial Review. In addition, start now to develop numeric criteria for all 180 constituents common in produced water nationwide, for which there is an approved standard method and toxicity values and for which we do not currently have a standard, for adoption at a later date. NMED should also encourage and support increased characterization of produced water in New Mexico to help identify which of the 180 constituents are most common in New Mexico's produced water and therefore should be prioritized for standard development.

20.6.4.900.K NMAC – No changes proposed.

L. The acute aquatic life criteria for TAN (mg/L) was derived by the EPA (2013) as the one-hour average concentration of TAN mg/L that shall not be exceeded more than once every three years on average. The EPA acute criterion magnitude was derived using the following equation:

Acute TAN Criterion Magnitude for 1-hour average=

$$\text{MIN}\left(\left(\frac{0.27}{1+10^{7.204-pH}}+\frac{39}{\quad}\right),\ \left(0.7249x\left(\frac{0.0114}{1+10^{\quad}}+\frac{1.6181}{1+10^{pH-7.204}}\right)x\left(23.12\times 10^{0.036(20-T)}\right)\right)\right)$$

T (temperature C) and *pH* are defined as the paired values associated with the TAN sample.

(1) Temperature and pH-dependent values of the acute TAN criterion magnitude - when *Oncorhynchus* spp. absent.

	Temperature (°C)																					
pH	0-10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
6.5	51	48	44	41	37	34	32	29	27	25	23	21	19	18	16	15	14	13	12	11	9.9
6.6	49	46	42	39	36	33	30	28	26	24	22	20	18	17	16	14	13	12	11	10	9.5
6.7	46	44	40	37	34	31	29	27	24	22	21	19	18	16	15	14	13	12	11	9.8	9
6.8	44	41	38	35	32	30	27	25	23	21	20	18	17	15	14	13	12	11	10	9.2	8.5
6.9	41	38	35	32	30	28	25	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	7.9
7.0	38	35	33	30	28	25	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	7.9	7.3
7.1	34	32	30	27	25	23	21	20	18	17	15	14	13	12	11	10	9.3	8.5	7.9	7.2	6.7
7.2	31	29	27	25	23	21	19	18	16	15	14	13	12	11	9.8	9.1	8.3	7.7	7.1	6.5	6
7.3	27	26	24	22	20	18	17	16	14	13	12	11	10	9.5	8.7	8	7.4	6.8	6.3	5.8	5.3
7.4	24	22	21	19	18	16	15	14	13	12	11	9.8	9	8.3	7.7	7	6.5	6	5.5	5.1	4.7
7.5	21	19	18	17	15	14	13	12	11	10	9.2	8.5	7.8	7.2	6.6	6.1	5.6	5.2	4.8	4.4	4
7.6	18	17	15	14	13	12	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5
7.7	15	14	13	12	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5	3.2	2.9
7.8	13	12	11	10	9.3	8.5	7.9	7.2	6.7	6.1	5.6	5.2	4.8	4.4	4	3.7	3.4	3.2	2.9	2.7	2.5
7.9	11	9.9	9.1	8.4	7.7	7.1	6.6	~~3~~6.0	5.6	5.1	4.7	4.3	4	3.7	3.4	3.1	2.9	2.6	2.4	2.2	2.1
8.0	8.8	8.2	7.6	7	6.4	5.9	5.4	5	4.6	4.2	3.9	3.6	3.3	3	2.8	2.6	2.4	2.2	2	1.9	1.7
8.1	7.2	6.8	6.3	5.8	5.3	4.9	4.5	4.1	3.8	3.5	3.2	3	2.7	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4
8.2	6	5.6	5.2	4.8	4.4	4	3.7	3.4	3.1	2.9	2.7	2.4	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2
8.3	4.9	4.6	4.3	3.9	3.6	3.3	3.1	2.8	2.6	2.4	2.2	2	1.9	1.7	1.6	1.4	1.3	1.2	1.1	1	0.96
8.4	4.1	3.8	3.5	3.2	3	2.7	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79
8.5	3.3	3.1	2.9	2.7	2.4	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2	1.1	0.98	0.9	0.83	0.77	0.71	0.65
8.6	2.8	2.6	2.4	2.2	2	1.9	1.7	1.6	1.5	1.3	1.2	1.1	1	0.96	0.88	0.81	0.75	0.69	0.63	0.58	0.54
8.7	2.3	2.2	2	1.8	1.7	1.6	1.4	1.3	1.2	1.1	1	0.94	0.87	0.8	0.74	0.68	0.62	0.57	0.53	0.49	0.45
8.8	1.9	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37
8.9	1.6	1.5	1.4	1.3	1.2	1.1	1	0.93	0.85	0.79	0.72	0.67	0.61	0.56	0.52	0.48	0.44	0.4	0.37	0.34	0.32
9.0	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37	0.34	0.32	0.29	0.27

20.6.4.900.L(2) through 20.6.4.900.M NMAC – No changes proposed.

20.6.4.901 PUBLICATION REFERENCES: These documents are intended as guidance and are available for public review during regular business hours at the offices of the surface water quality bureau. Copies of these documents have also been filed with the New Mexico state records center ~~in order~~ to provide greater access to this information.

A. American public health association. 1992. *Standard Methods for The Examination of Water and Wastewater, 18th Edition.* Washington, D.C. 1048 p.

B. American public health association. 1995. *Standard Methods for The Examination of Water and Wastewater, 19th Edition.* Washington, D.C. 1090 p.

C. American public health association. 1998. *Standard Methods for The Examination of Water and Wastewater, 20th Edition.* Washington, D.C. 1112 p.

D. American public health association. 2018. *Standard Methods for The Examination of Water and Wastewater, 23rd Edition.* Washington, D.C. 1796 p.

E. American public health association. 2023. *Standard Methods for The Examination of Water and Wastewater, 24th Edition.* Washington, D.C. 1516 p.

~~E~~F. United States geological survey. 1989. *Methods For Determination of Inorganic Substances In Water And Fluvial Sediments, Techniques of Water-Resource Investigations of The United States Geological Survey.* Washington, D.C. 545 p.

~~F~~G. United States geological survey. 1987. *Methods For The Determination Of Organic Substances In Water And Fluvial Sediments, Techniques Of Water-Resource Investigations Of The United States Geological Survey.* Washington, D.C. 80 p.

~~G~~H. United States environmental protection agency. 1983. *Methods For Chemical Analysis Of Water And Wastes.* Office of research and development, Washington, DC. (EPA/600/4-79/020). 491 p.

~~H~~I. New Mexico water quality control commission. 2020. *State Of New Mexico Water Quality Management Plan and Continuing Planning Process*. Santa Fe, New Mexico. 277 p.

~~I~~J. Colorado river basin salinity control forum. ~~2020~~2023. ~~*2020*~~*2023 Review, Water Quality Standards For Salinity, Colorado River System.* Phoenix, Arizona. ~~97~~112 p.

~~J~~K. United States environmental protection agency. 2002. *Methods For Measuring The Acute Toxicity Of Effluents And Receiving Waters To Freshwater And Marine Organisms.* Office of research and development, Washington, D.C. (5th Ed., EPA 821-R-02-012). 293 p.

~~K~~L. United States environmental protection agency. 2002. *Short-Term Methods For Estimating The Chronic Toxicity Of Effluents And Receiving Waters To Freshwater Organisms.* Environmental monitoring systems laboratory, Cincinnati, Ohio. (4th Ed., EPA 821-R-02-013). 335 p.

~~L~~M. United States environmental protection agency. 1991. Ambient-induced mixing, in *Technical Support Document For Water Quality-Based Toxics Control*. Office of water, Washington, D.C. (EPA/505/2-90- 001). 335 p.

~~M~~N. United States environmental protection agency. 1983. *Technical Support Manual: Waterbody Surveys And Assessments For Conducting Use Attainability Analyses, Volume I*:. Office of water, regulations and standards, Washington, D.C. 232 p.

~~N~~O. United States environmental protection agency. 1984. *Technical Support Manual: Waterbody Surveys And Assessments For Conducting Use Attainability Analyses, Volume III: Lake Systems*. Office of water, regulations and standards, Washington, D.C. 208 p.

October 14, 2025

Via SmartComment Portal

Attn: New Mexico Environment Department – Surface Water Quality Bureau
Bureau Chief Shelly Lemon
Harold L. Runnels Building,
1190 S. St. Francis Dr., P.O. Box 5469,
Santa Fe, NM 87502
shelly.lemon@env.nm.gov

Re: New Mexico Mining Association's Comments on the New Mexico Environment Department's Proposed Amendments to Standards for Interstate and Intrastate Surface Waters (20.6.4 NMAC) – Triennial Review

Dear Bureau Chief Lemon:

In accordance with the public notice the New Mexico Environment Department's ("NMED") Surface Water Quality Bureau ("SWQB") issued on August 15, 2025, the New Mexico Mining Association ("NMMA") hereby submits its comments on the SWQB's proposed amendments to the State's standards for interstate and intrastate surface waters (20.6.4 NMAC). NMMA appreciates the opportunity to provide comments on the proposed amendments.

The following comments are based on the Public Comment Draft of NMED's Proposed Amendments to 20.6.4 NMAC, issued August 15, 2025.

1. **Proposed Change to "Wetlands" Definition**

NMED proposes in 20.6.4.7.W(4) NMAC to delete from the definition of wetlands the provision regarding "the prevalence of" wetlands. NMED also proposes to add the following to the definition: "Wetlands are unique surface waters of the state that vary widely because of regional and local differences in soils, topography, climate, hydrology, water chemistry, vegetation and other factors and provide distinct chemical, biological, physical, and hydrological functions within a watershed."

NMMA opposes the modification to this definition for several reasons. First, the federal definition of wetlands emphasizes that wetlands are "areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, *a prevalence of* vegetation typically adapted for life in saturated soil conditions." 40 C.F.R. § 230.41 (emphasis added). By removing "the prevalence of", NMED's proposed definition omits the biological indicator (vegetation prevalence) that has long been a core diagnostic criterion used by the Corps of Engineers for determining whether an area qualifies as a wetland. This omission would create inconsistency with federal standards and introduce uncertainty to the method by which wetlands would be identified at the state level, since existing federal guidance

might no longer apply. In that case, NMED would have to develop new separate technical guidance or make determinations regarding what areas constitute "wetlands" on a case-by-case basis. Note that, if NMED chooses to base a revised definition on new technical guidance, then under the State Rules Act, Section 14-4-5.2.A(7), NMSA 1978, at the time of publication of the notice of the proposed rulemaking, NMED must provide "a citation to technical information, if any, that served as a basis for the proposed rule, and information on how the full text of the technical information may be obtained." That would have to include any information specified in section 74-6-4.D, NMSA 1978, to be utilized as a basis for the change to the definition of "wetlands" in 20.6.4 NMAC. If NMED is proposing to make all determinations regarding application of a new definition of wetlands on a case-by-case basis, NMMA is very concerned that such an approach would overwhelm NMED's capacity to make determinations in a timely manner, resulting in potential delays in permitting economic development, transportation and other projects within New Mexico.

Additionally, with regard to "wetlands" as defined in 20.6.4 in the context of federal law, the federal determination of wetlands has been narrowed by *Sackett v. EPA*, 598 U.S. 651 (2023), which held that wetlands are only subject to federal jurisdiction if they have a continuous surface connection to relatively permanent waters such that it is difficult to determine where the "water" ends, and the "wetland" begins. NMED's proposed definition arguably broadens the scope of wetlands contemplated by *Sackett* by focusing on their distinct biological, chemical, and hydrological functions rather than their hydrological connectivity to jurisdictional waters. This may lead to regulatory inconsistencies, as areas considered "wetlands" under New Mexico's definition may not qualify as wetlands under federal Clean Water Act jurisdiction. NMMA acknowledges that there is some divide at the federal level regarding the definition of wetlands, which is subject to ongoing litigation. However, it should be noted that even pre-*Sackett*, NMED's proposed definition would encompass areas not traditionally recognized as wetlands, such as ephemeral drainages, isolated playas, arroyo bottoms, or other riparian areas that exhibit hydric soils only seasonally or after storm events. Accordingly, the proposed definition exceeds the bounds of federal precedent and introduces a level of regulatory ambiguity that is neither supported by law nor practicable for implementation. This will result in complicating permitting, enforcement, and project coordination between federal and state agencies.

Recommendation: NMMA opposes the proposed definition of wetlands and suggests keeping the definition of wetlands as it is currently written in 20.6.4.7 (W)(4) NMAC.

2. No Net Loss of Wetlands

NMED proposes in 20.6.4.13.N NMAC to add a section providing water quality protections for New Mexico wetlands. This includes that "direct, indirect, or cumulative impacts, does not result in the net loss of wetland acreage or biological, chemical, physical, and hydrological functions…" NMMA opposes the Department's proposed section, as it goes beyond the legislative intent and plain-meaning definition of compensatory mitigation contained within Senate Bill 21[1] ("SB 21") and the Water Quality Act, NMSA 1978 Chapter 74, Article 6.

[1] SB 21 amended the Water Quality Act in 2025, which included the addition of the definition of compensatory mitigation.

Compensatory mitigation is defined as "the process of restoring, establishing, enhancing or preserving wetlands, streams or other aquatic resources to offset unavoidable adverse impacts that remain after appropriate and practicable avoidance and minimization measures have been achieved." NMSA 1978 § 74-6-2 (F) (2025). Per the Water Quality Act, the Water Quality Control Commission ("WQCC") "shall not adopt or promulgate a standard or rule that exceeds a grant of rulemaking authority listed in the statutory section of the Water Quality Act authorizing the standard or rule." NMSA 1978 § 74-6-4 (C) (2025). By proposing that water quality protection results in no net loss of wetlands, the Department is requesting the WQCC to exceed its rulemaking authority and go beyond the bounds of statutory requirements. The statutory definition of compensatory mitigation does not include a provision for "no net loss" of wetlands, rather the standard is to "offset unavoidable adverse impacts that remain." NMED's proposed section shifts the regulatory focus from achieving practicable mitigation to achieving a specific measurable outcome, which the legislation did not authorize and is inconsistent with the intent and limits of SB 21.

Additionally, a "no net loss" standard implies a quantifiable accounting of wetland acreage, but the Department has not proposed a methodology for how such an accounting would occur. Without clear criteria regarding this standard, this requirement risks delays and uncertainty with permits as applicants would be unable to predict how mitigation or impacts would be evaluated. Moreover, the Department would have the obligation to comply with the State Rules Act, cited above, and the Water Quality Act, section 74-6-4.D, NMSA 1978, concerning the identification and availability of technical information on which a "no net loss" standard is founded and would be applied.

Recommendation: NMMA opposes section 20.6.4.13.N NMAC as it is proposed and suggests that the Department omit it from the proposed changes to the surface water quality standards or modify the language to ensure consistency with statutory definitions, including removal of "no net loss." Corresponding changes should be made where 20.6.4.13.N is referenced elsewhere, such as the proposed changes to 20.6.4.98 and 20.6.4.99 NMAC.

3. Additional Comments

Public Water Supply: NMMA questions the proposed change to the definition of "Public water supply." First, because the federal rules are incorporated into the New Mexico Drinking Water Regulations ("NMDWR"), we see no need to refer to 40 CFR 141. Also, NMMA believes that the second sentence of the definition is misplaced and unnecessary as part of the surface water quality standards and should be deleted, rather than edited. The language of that sentence as edited also falls outside the lawful scope of the surface water quality standards and would, at best, duplicate and, at worst, conflict with, requirements in the NMDWR.

Antidegradation Policy and Implementation Plan: For reasons discussed above relating to the proposed change in the definition of "wetlands," and because they are unnecessary, unclear and lacking in statutory authority, NMMA opposes all of the proposed changes to 20.6.4.8 NMAC.

The New Mexico Mining Association appreciates the Department's efforts in developing the proposed rule and the opportunity to provide input through this public comment process. NMMA looks forward to continued collaboration with the Department to ensure that the final rule is clear, practicable, and consistent with legislative intent.

Sincerely,

Matt Thompson
Executive Director

October 13, 2025

New Mexico Environment Department
Surface Water Quality Bureau
P.O. Box 5469
Santa Fe, NM 87502

Attn: Michael Baca
Water Quality Standards Coordinator

Via E-mail to: michael.baca1@env.nm.gov

Re: San Juan Water Commission's Comments on Public Review Draft of Proposed Amendments to Water Quality Standards, 20.6.4 NMAC (2026 Triennial Review)

Dear Mr. Baca:

Pursuant to the New Mexico Environment Department's ("NMED") notice of a public comment period for the proposed amendments to the State's Standards for Interstate and Intrastate Surface Waters, 20.6.4 NMAC ("2026 Triennial Review"), I hereby provide the following comments on behalf of the San Juan Water Commission ("SJWC"). These comments are based on our review of NMED's August 25, 2025, Public Review Draft for the 2026 Triennial Review, as well as the information provided by NMED personnel at the virtual meeting held on September 10, 2025. SJWC appreciates the opportunity provided by NMED to comment on the Public Review Draft.

Substantive Comments

1. Selenium Criteria – 20.6.4.900(J)(1) NMAC. NMED proposes adoption of chronic criteria for selenium for aquatic life uses based on criteria adopted by EPA in 2016. The proposal includes both fish tissue-based and water-based criteria, but NMED has not indicated which type of criteria it intends to primarily apply when determining (i) whether to adopt or modify a TMDL, (ii) whether a state surface water is impaired, or (iii) what effluent limits to apply to an NPDES permit. As EPA has given primacy to the fish tissue-based criteria over the water-based criteria, NMED should indicate which criteria it intends to apply most frequently. *See* EPA's Aquatic Life Ambient Water Quality Criterion for Selenium in Freshwater 2016-Fact Sheet, EPA 822-F-16-005 (June 2016), at 2, n.1 ("EPA Fact Sheet"). Further, EPA's 2016 selenium criteria include a value for fish egg-ovary concentrations, and EPA recommends that it be included in state standards. NMED should explain why it has elected not to propose the fish egg-ovary criteria.

The proposed chronic water-based criteria for aquatic life (1.5 µg/L lentic and 3.1 µg/L lotic) are much stricter than existing water-based criteria, such as for domestic water supply and livestock watering (both 50 µg/L). As NMED is aware, some waters in the San Juan Basin have high natural background levels of selenium. In fact, NMED prepared a TMDL for selenium in Gallegos Canyon (San Juan River to Navajo Boundary) in 2005. Selenium was last addressed in depth during the1999 Triennial Review. At that time, SJWC presented evidence that studies conducted in the Upper Colorado River Basin showed that hatching success for the razorback sucker occurred in waters where average concentrations of selenium were higher than the criteria proposed by NMED. Further, SJWC presented evidence that application of a sediment-based selenium toxicity model capable of accounting for the organic content of streams indicated an allowable level of 31 µg/L of dissolved selenium in the San Juan Basin based on the potential for selenium uptake in the food chain. Put simply, the model reflected the reduced opportunity for food chain uptake of selenium in low organic, moving streams in the San Juan Basin. When data from high organic content water bodies was applied to the model, the model predicted allowable selenium levels in the range of 3-5 µg/L dissolved. As noted in EPA's Fact Sheet (at 1), "the latest scientific knowledge . . . indicates that selenium toxicity to aquatic life is primarily based on organisms consuming selenium-contaminated food rather than by being exposed only to selenium dissolved in water."

For these reasons, NMED should not propose state-wide chronic aquatic life standards for selenium, whether water-based or fish tissue-based. Rather, NMED should collect data specific to regions of the state, like the San Juan region, where there are high natural background selenium levels. Based on that data, NMED can propose site-specific criteria accounting for differing local conditions. In fact, EPA supports such site-specific criteria:

> States and authorized Tribes also have the additional option of adopting site-specific water column criterion elements, if desired . . . . The relationship between the concentration of selenium in the tissues of fish and the concentration of selenium in the water column can differ substantially between different aquatic systems. The chemical form of selenium, species of fish, the species and proportion of prey, and a variety of site-specific biogeochemical factors affect selenium bioaccumulation and thus determine the allowable concentration of selenium in ambient water that is protective of aquatic life.

EPA Technical Support for Adopting and Implementing the EPA's 2016 Selenium Criterion in Water Quality Standards, EPA 820-R-24-001 (April 2024), at 12-13.

Adoption of an unnecessarily strict selenium standard could have significant economic impacts in the San Juan region as the cost of reducing selenium discharges can be quite high. Such costs may reduce opportunities for future economic development and also negatively impact existing municipal and industrial projects.

2. Definition of "Wetlands" – 20.6.4.7(W)(4). NMED proposes modifying the definition of "wetlands" to add a sentence to "clarify" that: "Wetlands are unique surface waters of the state that vary widely because of regional and local differences in soils, topography, climate, hydrology, water chemistry, vegetation and other factors and provide distinct chemical, biological, physical, and hydrological functions within a watershed." SJWC objects to this proposal as unnecessary because this same statement applies equally to all types of surface waters of the state. NMED also proposes removing the requirement that wetlands contain "a prevalence of" vegetation typically adapted for life in saturated soil conditions in New Mexico. SJWC objects to this proposal on the ground that it makes the definition of a wetland too ambiguous for both NMED and permittees and provides permit writers with too much discretion in determining the existence and boundaries of a wetland.

3. Wetlands—Antidegradation Policy – 20.6.4.8(A) NMAC. NMED proposes several modifications to the antidegradation policy to add references to "wetland condition," "wetland acreage," and "wetland functions." SJWC objects to these proposals as unnecessary. The existing antidegradation policy "applies to all surface waters of the state," 20.6.4.8(A)(1) NMAC, and wetlands fall within the definition of "surface waters of the state," 20.6.4.6(S)(5)(a)(vi) NMAC.

4. General Criterion for Wetlands – 20.6.4.13(N) NMAC. NMED proposes adoption of a "general" criterion for wetlands:

> N. Wetlands: Only wetlands of the state are subject to this general criterion. Wetlands shall be maintained and protected such that degradation through direct, indirect, or cumulative impacts does not result in the net loss of wetland acreage or biological, chemical, physical, and hydrological functions to the extent that such functions occur, as characterized by state-specific benchmarks. The functions of a wetland that are to be maintained and protected may include:
>
> (1) erosion control through bank and shoreline stabilization;
> (2) flood attenuation and flood protection;
> (3) sediment and pollutant retention, which prevents or mitigates downstream migration;
> (4) groundwater recharge and water storage for future use;
> (5) low flow augmentation including baseflow maintenance;
> (6) water filtration including removal or storage of nutrients and other contaminants;
> (7) propagation or maintenance of aquatic and terrestrial species indigenous to wetlands;
> (8) preservation of wildlife habitat including habitat for threatened or endangered species; or
> (9) supporting diversity.
>
> In addition, wetlands shall be suitable for recreation, wildlife habitat, and use by aquatic life and livestock.

SJWC objects to this proposal as unnecessary, ambiguous, overbroad, and outside the scope of authority under the New Mexico Water Quality Act. As already noted, wetlands are protected to the same extent as any other water of the state, and therefore this section is unnecessary. Further, NMED's proposal is ambiguous with respect to its references to "indirect or cumulative impacts," "net loss of wetlands acreage," "hydrological functions," "state-specific benchmarks," and the wetland functions that "may" be included in the list of functions to be maintained and protected.

Under the Water Quality Act, the Water Quality Control Commission ("WQCC") has authority to adopt water quality standards to support designated uses assigned to a water body. The WQCC also may adopt regulations to prevent or abate water pollution. NMSA 1978, §§ 74-6-4(D), (E). "Water pollution" means "introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or the use of property." *Id.*, §74-6-2(C). A "water contaminant" is "any substance that could alter, if discharged or spilled, the physical, chemical, biological or radiological qualities of water." *Id.*, § 74-6-2(B). SJWC submits that most of the functions listed by NMED, including erosion control, water storage and low flow augmentation, are outside the WQCC's authority under the Water Quality Act as they are unrelated to the introduction of water contaminants. Further, the WQCC has no authority to modify property rights in water, and the

mandated protection of functions such as water storage and low flow augmentation likely will impinge on the use of water rights. *Id.*, § 74-6-12(A).

5. Rulemaking – 20.6.4.10(F) NMAC. NMED proposes shifting all costs of rulemaking hearings to the petitioner, including paying for the venue, the hearing officer, the court reporter, transcripts, translation services, interpretation services, and public notice requirements. As NMED notes, the WQCC historically has covered these costs through NMED's budget. The WQCC has done so even when NMED was not the petitioner. Section 74-6-6 of the Water Quality Act requires a public hearing before a regulation or water quality standard is adopted. As hearings are a statutory function of the WQCC, it is the responsibility of the WQCC to fund those hearings. Indeed, that is a basic function of government. If funding is required to be provided from NMED's budget by virtue of the fact that the WQCC is administratively attached to that agency, then it is the duty of the WQCC and NMED to ensure that adequate rulemaking funding is sought from the Legislature. In fact, as an "administratively attached agency," the WQCC is authorized to submit its budgetary requests through NMED. NMSA 1978, § 9-1-7(A)(2). Requiring a non-NMED petitioner to bear the costs of a hearing will have a severe chilling effect on potential petitioners and leave NMED entirely in control of the WQCC's rulemaking agenda.

Timing of the Triennial Review Hearing

Given NMED's intent to "petition the WQCC by the end of 2025 for a hearing in the second half of 2026," SJWC requests that NMED seek a hearing date no earlier than September 2026. Several other significant WQCC rulemakings are in the pipeline, including the WATR Alliance produced water reuse petition and the anticipated rulemaking on the new state permitting program. Those rulemakings, together with the Triennial Review rulemaking, will require the expenditure of substantial time and expense resources by the WQCC, NMED, and the participating parties. In order to ensure a full and fair opportunity to participate, the Triennial Review should not be rushed, and parties should be given enough time to obtain expert witnesses and prepare direct and rebuttal expert reports and supporting exhibits.

Thank you for the opportunity to comment on NMED's proposed revisions to the State's surface water quality standards. SJWC reserves the right to supplement these comments, and to comment on any additional proposed changes, as the Triennial Review process proceeds.

Sincerely,

Aaron Chavez
Executive Director
San Juan Water Commission

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Environmental Protection & Compliance Division Compliance Programs Group

Symbol: EPC-DO: 25-290
LA-UR: 25-30057
Date: October 14, 2025

Michael Baca, WQS Coordinator
Surface Water Quality Bureau
New Mexico Environment Department
Harold Runnels Building, Room
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VIA ELECTRONIC MAIL

Subject: Comments of Triad National Security, LLC, Operator of the Los Alamos National Laboratory, on New Mexico Environment Department Public Review Draft for the 2026 Triennial Review and 20.6.4 NMAC

Dear Mr. Baca,

Triad National Security, LLC, the management and operating contractor for the Los Alamos National Laboratory, submits the enclosed comments in response to the New Mexico Environment Department's (NMED) Public Review Draft for the 2026 Triennial Review, which proposes changes to surface water quality standards in New Mexico Administrative Code Section 20.6.4.

The Los Alamos National Laboratory executes work across numerous missions, including national security, science, artificial intelligence, environmental monitoring, and energy. The Laboratory achieves its missions when it also protects the environment, complies with environmental requirements, and reduces or eliminates environmental risk. To support its missions, the Laboratory gathers wastewater from various generators, treats the wastewater, and discharges treated water to Rio Grande tributary waters. The Laboratory discharges clean water in compliance with federal and state regulations and permits, and through use of control technology and best practices. The Laboratory also compliantly manages stormwater and actions affecting wetlands.

Protecting the environment requires clear regulatory requirements and efficient regulatory processes. The Triennial Review provides an opportunity to clarify requirements and improve processes. In this Triennial Review, NMED is reviewing and proposing changes to surface water quality standards. NMED is accepting public comments and will incorporate comments, as appropriate, into draft regulations. Comments can help clarify regulatory requirements and improve regulatory processes.

The Laboratory appreciates the opportunity to provide comments for NMED's consideration and hopes the comments may be useful to NMED.

Sincerely,

SARAH HOLCOMB (Affiliate)
Digitally signed by SARAH HOLCOMB (Affiliate)
Date: 2025.10.14 09:33:55 -06'00'

Sarah Holcomb
Group Leader
Environmental Compliance Programs
Triad National Security, LLC

Attachment: Comments from Triad National Security, LLC, Operator of the Los Alamos National Laboratory, on New Mexico Environment Department Public Review Draft for the 2026 Triennial Review and 20.6.4 NMAC

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ATTACHMENT 1

Comments from Triad National Security, LLC,
Operator of the Los Alamos National Laboratory,
on New Mexico Environment Department Public Review Draft for the 2026 Triennial Review and 20.6.4 NMAC

EPC-DO: 25-290

LA-UR: 25-30057

Date: 10/14/2025

INTRODUCTION

Triad National Security, LLC manages and operates the Los Alamos National Laboratory on behalf of the United States Department of Energy National Nuclear Security Administration. The Los Alamos National Laboratory is a Federally Funded Research and Development Center and National Security Laboratory that executes work across numerous missions, including national security, science, artificial intelligence, and energy. In support of its missions, certain Laboratory facilities receive, treat, and discharge clean water to various Rio Grande tributary waters. The Laboratory also manages stormwater discharges to various Rio Grande tributary waters, adopting control technologies and best practices. The Laboratory's discharges comply with federal and state law and with federal and state permits.

The Laboratory achieves its missions when it also protects the environment, complies with environmental requirements, and reduces or eliminates environmental risk. To protect the environment and to compliantly and effectively operate requires clear regulatory requirements and efficient regulatory processes.

Comment 1:

Many of the waters to which the Los Alamos National Laboratory discharges are federal jurisdictional waters or point sources. These waters are tributaries of, and connected and contribute flow to, a traditional navigable water - the Rio Grande. The waters form, individually and collectively, an integrated and cohesive river network. A river network is a hierarchical, interconnected group of channels that drains surface and subsurface water from a watershed to a river and includes the river itself. The waters are an integral, indistinguishable part of the Rio Grande's tributary system or river network.

Comment 2:

The language added in the "wetlands" definition in 20.6.4.7.W(4) NMAC is vague, and its intent and application are unclear.

- **What is included in, and what is exempt from the "wetlands" definition?**

  The new sentence states that wetlands are "unique" and "vary widely because of regional and local differences." While the "BASIS OF CHANGE" explanation states that recognizing wetlands' "characteristics and functions will help protect and maintain these features, it is not clear how the additional language will accomplish this. The new terms could be interpreted to either restrict or broaden the definition. How does the uniqueness and variety of wetlands impact interpretation of the existing definition which defines wetlands "under normal circumstances"? If wetlands "vary widely," how much can their features vary before they are no longer considered wetlands?

  Further, it is unclear whether the definition includes wetlands created or supported by human activities, such as discharges. If it does, what if the human activities cease? Does the definition include wetlands created or supported by drainage ditches or canals? By artificially irrigated areas? By recharge features? By environmental monitoring or remedial activities? By temporary sedimentation basins or ponds? By safety improvements? Is a feature a wetland if only human activities can maintain it as such? Wetlands created by, or whose continued functioning is contingent on, human activities should not be defined as wetlands or should be exempt from regulation.

- **The new language does not address changes to wetlands caused naturally, such as by reduced precipitation, or by changes in the timing or intensity of precipitation, or by changes to an adjacent watercourse.**

- **Are wetlands regulated by the U.S. Army Corps of Engineers also going to be regulated by the State? Are there other "wetlands" that should be exempt from the "wetlands" definition?**

- **The wetland definition does not reference parameters or methods to determine how an area is determined to be a wetland.**

  The definition notes that wetlands "provide distinct chemical, biological, physical, and hydrologic functions within a watershed," but does not explain what functions may be indicative of a wetland; what functions may be associated with something that is not a wetland; or what functions require protection. For comparison, see e.g. the U.S. Army Corps of Engineers Wetland Delineation Manual.

  Consider adding the following language: "Wetlands identification/delineation shall rely on analysis of wetland hydrology indicators, hydrophytic vegetation and hydric soils through scientifically defensible methods as described in U.S. Army Corps of Engineers (USACE) Wetland Delineation Manual, latest edition, appropriate USACE Regional Supplement manuals, latest editions."

- **The addition of wetlands to the draft document does not provide enough guidance on types of waters to exempt from dredge/fill and wetland authorization requirements. Please consider expanding the <u>types of waters to exclude from dredge/fill and wetland authorization requirements</u> such as the following:**

  - Drainage ditches designed for at least the partial purpose of increasing drainage of a particular land area or infrastructure for purposes including agriculture, transportation (e.g., roadside), and stormwater management.
  - Stormwater control features that are constructed to convey, treat, or detain stormwater.
  - Artificially irrigated areas that would revert to uplands (any land area that, under normal circumstances, is not a wetland and does not lie below the ordinary high watermark) if irrigation ceased.
  - Wetlands that are adjacent to a ditch or canal and supported by water in the adjacent ditch or canal.
  - Recharge features, including ponds, for the purpose of facilitating recharge of aquifers or streams.
  - Construction of temporary sedimentation basins/ponds on a construction site, with construction that does not include placement or fill material into state waters.

- **The draft document also does not provide enough guidance on types of activities in wetlands and floodplains exempt from dredge/fill and wetland authorization requirements. Please consider adding the <u>types of activities to exclude from dredge/fill and wetland authorization requirements</u> such as the following:**

  - Site characterization, environmental monitoring, or environmental research activities (e.g., sampling and surveying of water, air, flora and fauna abundance, soil properties) in a floodplain or wetland.
  - Maintenance of drainage ditches or dikes, embankments, impoundments, water control features, and other water conveyance features that are human-made and intended to be maintained.
  - Maintenance of stormwater control features that are constructed to convey, treat, or temporarily store stormwater.

- Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures, such as dikes, dams, riprap, culverts, bridge abutments or approaches, and transportation structures. Maintenance also includes minor deviations in a structure's configuration or filled area to accommodate changes in materials, construction techniques, regulatory requirements, or construction codes or safety standards.
- Routine maintenance of existing facilities and structures in a floodplain or wetland. Maintenance is routine when it is needed to maintain and preserve the facility of structure for its designated purpose (e.g., activities such as reroofing, plumbing repair, door and window replacement).
- Minor modification (e.g., upgrading lighting, heating, ventilation, air conditioning systems, installing or improving alarm and surveillance systems, adding environmental monitoring or control systems, adding) of an existing facility or structure in a floodplain or wetland to improve safety or environmental conditions unless the modification would involve draining, dredging, channelizing, filling, diking, impounding, or related activities.
- Activities for the purpose of providing emergency response to, preventative mitigation of, or recovery from damage caused by a fire, a flood, or other natural disasters so long as the activity is conducted in a manner that minimizes the loss of state waters to the extent practicable and in accordance with best management practices that do not interfere with efforts to address the underlying emergency.

Please see also Comment 3, incorporated here by reference.

Comment 3:

In 20.6.4.8.A, the definition of "wetland condition" is vague and the antidegradation policy's implementation is not clear.

- **What is meant by "by inference, wetland quality (i.e., functions) and quantity (i.e., acreage)"?**

  What is being inferred, and for what purpose is it being inferred? What functions are considered in evaluating wetland quality? What is the importance of "quantity" or "acreage"?

  How will the New Mexico Environment Department quantify or measure degradation specific to wetlands? Is there a "level" of wetland condition that is necessary to protect existing uses? If so, how is that level calculated? If "wetland condition" is meant as a descriptive or qualitative term, what "conditions" are considered in evaluating the "wetland condition"? Is that limited to a measure of the wetland's ecological integrity? If so, how is a wetland's ecological integrity measured?

- **The "loss of wetland acreage" is not defined.**

  How will loss of quantity or acreage be quantified on a year-to-year basis? How will a wetland's natural expansion or reduction based on precipitation or other natural events be accounted for? Is there a quantity or acreage below which wetlands will not be regulated, or is there some amount of lost quantity or acreage that will be accepted before there is an impact to wetlands requiring regulation?

The State should provide quantifiable bounding limits on incidental loss of wetland acreage (e.g. greater than three-tenths of an acre of unavoidable adverse impacts to wetlands; OR greater than five-hundredths of an acre of unavoidable adverse impacts to streams).

The "loss of wetland acreage" does not acknowledge any difference between human-caused degradation and loss due to natural processes such as reduced annual precipitation or timing and intensity of received precipitation. This implies human intervention will be required to preserve wetlands that simply no longer receive enough rainfall to persist and further implies the need to supply another water source, such as pumped groundwater, to support such wetlands.

- **The New Mexico Environment Department's Water Quality Management Plan and Continuing Planning Process has not been updated to include how antidegradation analysis will be conducted for wetlands or how this may impact the permitting process.**

  When will any such updates be made? Will there be certain water quality standards applicable to each wetland or will water quality standards be applicable to all wetlands?

- **The antidegradation section does not provide for compensatory mitigation measures.**

  The current antidegradation section would benefit from greater clarity regarding implementation and from the inclusion of compensatory mitigation mechanisms. This would strengthen environmental protection and provide clear pathways for compliance.

  Every site has limitations, and it may not be practicable to avoid wetlands. The rule should include a means for compensatory mitigation measures to offset unavoidable adverse impacts that may remain after all appropriate and practicable avoidance and minimization has been achieved. Inclusion of means that create, enhance, restore, rehabilitate, or preserve wetlands should be considered as a means to avoid loss of wetland quantity or acreage on a State scale. Compensatory mitigation could include purchase of mitigation bank credits, an in-lieu fee program, or permittee-responsible mitigation.

  Please see also Comment 4, incorporated here by reference.

Comment 4:

Proposed Rule 20.6.4.10.F should be reconsidered.

- **The New Mexico Environment Department should not shift to the public the cost of correcting deficiencies in water quality standards.**

  Requiring petitioners to pay for administrative rulemaking processes will stifle efforts by the public to improve water quality standards. The proposed rule likewise creates a potential disincentive for New Mexico Environment Department to itself pursue necessary regulatory changes. Correcting deficiencies in water quality standards should be encouraged, not impeded. Petitioners should not be penalized for attempting to correct deficiencies in regulatory requirements or processes. Such corrections are in the public interest and are the costs of having, administering, and improving an environmental regulatory program.

- **Potential costs to petitioners, moreover, are unclear and may be prohibitive.**

  The rule includes a non-exhaustive list of costs, several of which could be substantial. In its "BASIS FOR CHANGE" explanation, the New Mexico Environment Department identifies other additional costs, including actions that might be taken by persons other than petitioners. And costs could increase further "depending on public interest." These are the costs of having, administering, and improving an environmental regulatory program. These are costs incurred in the public's interest. These are not costs that should be borne by petitioners.

  At minimum, petitioners' costs should be clearly defined and should be limited to costs over which petitioners have control. For example, petitioners should not be required to cover the costs of a venue, Hearing Officer, or court reporter where parties other than petitioners decide to present argument or evidence, nor should petitioners be required to cover the costs of technical experts or scientific reports used or developed by parties other than petitioners.

Comment 5:

Some terms in proposed rule 20.6.4.10.G are ambiguous.

- **Subsection G(3)'s reference to "…their intent to derive…" is not clear.**

  Should this read "…their intent to develop…"?

- **In subsection G(4), should site-specific criteria be developed in accordance with a "reviewed" work plan or in accordance with an "approved" work plan?**

  Subsection G(6) contemplates an "approved" work plan, but it is not clear where or how in the process the work plan will be approved.[1]

The Laboratory agrees that work plan requirements will improve communication and should "clearly outline expectations *and responsibilities*"[2] for developing site-specific criteria. Clarifying the ambiguities in the proposed rule furthers these benefits.

Comment 6:

- **Proposed rule 20.6.4.13.N is unclear.**

  What are "wetlands *of the state*"? It is not clear how "of the state" qualifies "wetlands." Are any wetlands within the state excluded from this definition? What is an "indirect" impact? How far removed does an impact have to be, or how unforeseeable does an impact have to be, before it is no longer considered an "indirect" impact? Presuming "net loss" qualifies both acreage and functions, what is meant by the "net loss of…biological, chemical, physical, and hydrological functions to the extent that such functions occur"? What are the "state-specific benchmarks"? How is suitability for "recreation, wildlife habitat, and use by aquatic life and livestock" evaluated? What "recreational use" must wetlands be suitable for?

[1] For comparison, please see rule 20.6.4.15.E(2), which provides that "[u]pon approval of the work plan by the department, the proponent shall conduct the use attainability analysis…."

[2] Clearly defining responsibilities is a means of easing NMED's concern that rulemakings may result in unanticipated costs.

Comment 7:

In proposed rules 20.6.4.98 and 20.6.4.99, the insertion of the exception for "wetlands protected under 20.6.4.13 NMAC" is confusing, in part because of the statement in 20.6.4.13 NMAC that "Only wetlands of the state are subject to this general criterion." If there are wetlands which are not wetlands of the state, are they now somehow subject to the criteria covering intermittent and perennial waters?

Comment 8:

It would be helpful to understand if the New Mexico Environment Department has the capacity and resources necessary to implement the proposed water quality standards efficiently and effectively. Additionally, clarification on how the Department plans to engage and collaborate with stakeholders, including the Los Alamos National Laboratory, would support successful implementation of the program. A transparent approach to coordination and resource planning will help ensure that the program is both effective and practical to all parties involved.

CONCLUSION

The Los Alamos National Laboratory is committed to improving regulatory requirements and processes. Such improvements can both protect water quality and facilitate compliance. The Laboratory appreciates the opportunity to comment on the Public Review Draft for the 2026 Triennial Review and hopes the New Mexico Environment Department may find its comments useful.

Western Resource Advocates

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October 14, 2025

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Submitted via SmartComment Portal

Re: New Mexico's 2026 Triennial Review: Public Review Draft for the 2026 Triennial Review

On behalf of Western Resource Advocates, I submit the following comments on the Public Review Draft for the 2026 Triennial Review posted by the New Mexico Environment Department (NMED). Western Resource Advocates is a nongovernmental organization that has, for decades, worked to protect and promote the water quality, stream flows, and the habitat health of and equitable access to New Mexico's surface waters. The proposed changes to New Mexico's Water Quality Standards (WQS) proposed by NMED, as well as those we recommend below will help ensure that the state's surface waters, including its wetlands, are safe for humans, wildlife and aquatic ecosystems and provide invaluable services to the people of the state.

I. Recommendations for Additions to New Mexico Water Quality Standards

WRA encourages NMED to, as part of the triennial review process, propose and adopt numeric criteria for numerous contaminants for which there are no numerical WQS. We propose several pollutants for NMED consideration but encourage NMED to look beyond this subset to address additional contaminants that are impairing or impacting the designated or existing uses of New Mexico's surface water.

Additional Forms of PFAS Chemicals

WRA commends NMED for its proposal to add to its WQS aquatic life criteria for certain PFAS chemicals. However, NMED is recommending the adoption of only the of EPA acute and chronic aquatic life water quality criteria for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS).[1] In addition to these two PFAS chemicals, WRA recommends that NMED include standards for other PFAS chemicals based on the benchmarks developed by EPA at the same time it finalized its recommended criteria for PFOA and PFOS. These additional chemicals are:

- Perfluorobutanoic acid (PFBA)
- Perfluorohexanoic acid (PFHxA)
- Perfluorononanoic acid (PFNA)
- Perfluorodecanoic acid (PFDA)
- Perfluorobutanesulfonic acid (PFBS)
- Perfluorohexanesulfonic acid (PFHxS)

[1] 89 Fed. Reg. 81078 (October 7, 2024).

- Hexadecafluoro-2-decenoic acid (8:2 FTUCA), and
- Pentadecafluorodecanoic acid (7:3 FTCA).

The EPA's *Acute Freshwater Aquatic Life Benchmarks for Eight Data-Limited PFAS* establishes maximum concentrations for these eight PFAS.[2] The analysis provides information, based on best available science, that New Mexico should consider as it sets acute water quality criteria for these chemicals to protect waters designated for use as aquatic ecosystems.

We also note that NMED has announced its efforts to comply with the 2024 EPA rule establishing drinking water standards for the same two kinds of PFAS: PFOA and PFOS. However, the final April 2024 EPA rule also included National Primary Drinking Water Regulations (NPDWRs) for PFHxS, PFNA, HFPO-DA (commonly known as GenX), and a Hazard Index based on a mixture of these three PFAS plus PFBS, 89 Fed. Reg. 32532 (April 26, 2024), although the current administration is reconsidering these standards.[3] The EPA standards are based on the best available science examining the health impacts of PFAS chemicals in drinking water.

Since adopting the drinking water standard for PFOA and PFOS, NMED has monitored the levels of PFAS chemicals in some of New Mexico's surface and ground waters that serve as public water supplies.[4] These data show fairly high levels of PFBS and levels of PFHxS approaching the NPDWR. Some monitored surface waters were also contaminated by PFNA, PFBA, and PFHxA. For some surface waters, levels of PFAS chemicals plus PFBS approached the EPA's Hazard Index Value of 1.0 ng/l. Of course, the drinking water supplies data are limited and many surface waters that support aquatic life were not subject to testing.[5]

These data show first that monitoring for PFHxS, PFNA, HFPO-DA, PFBA, PFHxA and PFBS is available and cost effective. Moreover, they indicated that to protect drinking water supplies, standards for PFHxS, PFNA, HFPO-DA and PFBS are appropriate – standards that will protect both aquatic life and human health. Finally, the monitoring data shows that in what are likely some of New Mexico's cleanest, most protected surface waters, levels of PFHxS, PFNA, PFBA, PFHxA and PFBS, individually and in combination with other PFAS, are cause for concern.

While PFOA and PFOS are the most prevalent PFAS chemicals in the environment, their use has largely been phased out by manufacturers.[6] Many additional forms of PFAS chemicals, including those recommended here, are still in use today in household products, food packaging, clothing, firefighting foam, and hydraulic fracturing fluids.[7] Moreover, without standards in place to protect surface waters

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[2] https://www.epa.gov/system/files/documents/2024-09/pfas-report-2024.pdf

[3] https://www.epa.gov/newsreleases/epa-announces-it-will-keep-maximum-contaminant-levels-pfoa-pfos.

[4] https://cloud.env.nm.gov/resources/_translator.php/YzQ0ODBjZDZjNGMxZjIwNWRmYTVhZWY1N18xODI2Njc~.pdf

[5] Monitoring data of wells likewise shows concerning levels of PFHxS, PFNA, HFPO-DA and PFBS individually or in combination. There is no question that polluted surface waters can contamination wells.

[6] https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/fact-sheet-20102015-pfoa-stewardship-program

[7] https://psr.org/new-report-fracking-with-forever-chemicals/

from these contaminants, it is likely that manufacturers will not make efforts to move away from using these dangerous chemicals, and indeed, will find incentives to use chemicals that are not regulated by New Mexico. All of the PFAS chemicals listed above have been linked to human or animal health impacts, including in vitro impacts, and often both, in numerous scientific studies.[8]

New Mexico's Holloman Lake has some of the highest contamination of PFAS ever recorded in the world, which not only effects the wildlife in the area but also the surrounding communities that traditionally rely on the lake for fishing and hunting waterfowl.[9] Given PFAS chemicals toxicity for both humans and animals, their bioaccumulation in tissues, and extreme persistence and prevalence in the environment, it is essential that New Mexico establish stringent WQS for additional PFAS chemicals, especially in the event of anticipated rollbacks at the federal level.

Alkylphenols and Alkylphenol Ethoxylates

Alkylphenols and their precursors, alkylphenol ethoxylates, are common industrial surfactants used in a variety of products and practices, including the industrial processing of textiles and materials and the production of oil and gas. Several alkylphenols and alkylphenol ethoxylates, including nonylphenol and octylphenol, have been identified as endocrine disruptors and can have a significant negative effect on fish and other aquatic species reproduction when present in the environment.[10] Both of these chemicals have been shown to cause acute and chronic toxicity to fish, invertebrates, and algae at various contamination levels. Although information related to the impact of these chemicals on human health is incomplete, these chemicals have been shown to mimic estrogenic potential and adversely impact the nervous system, cognitive function, immune system, and reproductive potential for a variety of species when present in the environment.[11]

While the presence of alkylphenols and their ethoxylates in the environment has decreased over recent years, these chemicals remain prevalent in oil and gas operations, both from naturally occurring sources and as additives to hydraulic fracturing fluids.[12] Specifically, octylphenol and nonylphenol and their ethoxylates have been the subject of ongoing regulatory scrutiny, with multiple states, including Connecticut,[13] Minnesota,[14] and Washington[15] establishing WQS for nonylpheno, and Minnesota establishing WQS for octylphenol.[16] Both variants are regulated by the European Union's Water Framework Directive legislation.[17]Furthermore, the U.S. EPA has published Water Quality Criteria for ambient aquatic life for nonylphenol,[18] Given the evidence of the negative impacts of alkylphenols and alkylphenol ethoxylates on aquatic species and the potential for adverse consequences for public health,

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[8] https://www.nrdc.org/bio/anna-reade/big-reveal-hundreds-health-studies-next-gen-pfas
[9] https://sourcenm.com/2025/01/27/new-mexico-wildlife-and-plants-around-holloman-lake-have-highest-pfas-contamination-on-record/
[10] https://www.sciencedirect.com/topics/medicine-and-dentistry/alkylphenol
[11] https://www.sciencedirect.com/science/article/pii/S0048969718312439#bb1245
[12] https://www.sciencedirect.com/science/article/abs/pii/S0269749123007595?via%3Dihub
[13] https://portal.ct.gov/-/media/deep/water/water_quality_standards/waterqualitystandardsproposed122209pdf.pdf
[14] https://www.health.state.mn.us/communities/environment/risk/docs/guidance/gw/nonylphinfo.pdf
[15] https://apps.ecology.wa.gov/publications/documents/0610091.pdf
[16] https://www.health.state.mn.us/communities/environment/risk/docs/guidance/gw/octylphenolinfo.pdf
[17] https://environment.ec.europa.eu/topics/water/water-framework-directive_en
[18] https://www.epa.gov/sites/default/files/2019-03/documents/ambient-wqc-nonylphenol-final.pdf

WRA recommends that NMED establish WQS for nonylphenol and octylphenol as part of this triennial review. These New Mexico-specific standards can readily be based on those adopted by other states.

Polycyclic Aromatic Hydrocarbons (PAHs)

Polycyclic Aromatic Hydrocarbons (PAHs) are a group of chemicals, widely distributed in the environmental, with significant adverse impacts on humans and animals. PAHs can occur in the environment from numerous sources, including natural processes, such as forest fires, and from industrial sources, such as tailpipe emissions, discharges from various manufacturing processes, and from hazardous material spills. Under current regulations, New Mexico has already established WQS for several PAH variants. However, the list is incomplete. The U.S. Government includes 17 PAHs in its public health profile, the following six of which are not regulated in New Mexico's Water Quality Standards:

- Acenaphthylene
- Anthracene
- Benzo[e]pyrene
- Benzo[g,h,i]perylene
- Benzo[j]fluoranthene
- Phenanthrene

The government's public health profile identifies 17 PAHs, including the preceding six, because there is significant information available on the toxicity of these chemicals. These PAHs are suspected to be more harmful than other PAHs, there is a greater chance of exposure to these chemicals than other forms, and they occur at higher concentrations at National Priorities List hazardous waste sites.[19] PAHs are known to be carcinogenic, can cause reproductive and birth defects, and have been linked to adverse impacts to immunological and neurological functioning in humans and animals.[20] Furthermore, several PAHs have been shown to persist in the environment, particularly in aquatic sediments,[21] and to have significant impacts on the health and fitness of important aquatic species.[22]As such, WRA recommends that NMED establish WQS for these additional six PAHs to protect human health and the environment from adverse impacts caused by potential exposure to these chemicals.

Formaldehyde and Acetone

Recognizing that toxics such as acetone and formaldehyde adversely impact human health, states like Pennsylvania have adopted human health criteria to protect public health from the adverse impacts of these chemicals. Pennsylvania's criteria were updated in 2022 based on EPA's 2015 human health criteria exposure inputs, which included new values for body weight, drinking water intake and fish consumption.[23] Pennsylvania also relied on EPA's recent health risk factors and current toxicity data to inform its recently adopted water quality standards for acetone and formaldehyde.

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[19] https://wwwn.cdc.gov/TSP/PHS/PHS.aspx?phsid=120&toxid=25
[20] https://doi.org/10.1080/10937404.2022.2164390
[21] https://www.sciencedirect.com/science/article/abs/pii/S0269749118306493
[22] https://www.sciencedirect.com/science/article/pii/S0048969724051131
[23] https://files.dep.state.pa.us/PublicParticipation/Public%20Participation%20Center/PubPartCenterPortalF

There is no question that the presence of these toxic pollutants in New Mexico's surface waters could reasonably be expected to interfere with the designated uses of those waters. Pennsylvania has included effluent limits for acetone and formaldehyde in its NPDES discharge permits and has recorded substantial concentrations of acetone in surface water monitoring samples. Therefore, because acetone and formaldehyde pose a threat to human health, because defensible WQS and reasonable monitoring protocols exist for these toxics and because the presence of these chemicals would interfere with the protection of the designated uses of New Mexico's waters, WRA recommends that NMED adopt WQS for acetone and formaldehyde based on Pennsylvania's human health criteria.

II. Proposed Additions to New Mexico WQS to Protect Wetlands

Many of the proposed changes to the New Mexico WQS identify the values and services provided by the state's wetlands and are intended to conserve and even improve the condition and function of these critical surface waters. WQS are the foundation of effective water quality-based pollution control. Initially, WQS designate the highest attainable uses for a water body, set criteria that reflect the current and evolving body of scientific information to protect those uses, and establish provisions to protect water bodies from further degradation. As surface waters of the state, wetlands are covered by the same safeguards that WQS provide for streams, rivers, ponds and lakes. WRA strongly supports the proposed amendments to New Mexico's WQS aimed at specifically extending WQS protections to wetlands.

As the proposed amendments to the WQS acknowledge, in addition to providing wildlife habitat, supporting biological diversity, and propagating and maintaining aquatic and terrestrial species, wetlands promote erosion control, flood attenuation and protection, sediment and pollutant retention, ground water recharge, flow augmentation and water filtration. The NMED proposal acknowledges that wetlands, due to their specific functions and sensitivities, are best protected by WQS directed at the role they play in the ecosystem. WRA appreciates and strongly supports NMED's recognition of the crucial role wetlands play in providing clean water, healthy aquatic ecosystems, recreation opportunities and flood control.

Given the invaluable ways that wetlands benefit water quality and natural systems, it is highly appropriate that NMED is proposing that wetlands of the state be maintained and protected so that direct, indirect and cumulative impacts do not result in a net loss of wetlands or adverse impacts to wetland function. *See* Draft 20.6.4.13.N. WRA also strongly supports the proposed changes to 20.6.4.8 that specifically incorporate wetlands into the state's antidegradation rule. These proposed amendments properly interject wetland-specific water quality standards into NMED decision-making.

However, safeguarding New Mexico's wetlands will require WQS that protect their ecological condition and the full range of wetland functions. To this end, NMED has proposed narrative, rather than numeric criteria as an initial step for developing WQS for wetlands. The draft WQS also apparently excluded wetlands from the protections of 20.6.4.900. However, as with water quality criteria for other surface waters, criteria for wetlands can and often should be numeric. Because numeric standards are typically more straight forward to monitor and enforce, we recommend that New Mexico adopt numeric standards in addition to the narrative standard whenever possible. For example, the current numeric standard for selenium for wildlife habitat is appropriate for wetlands that provide habitat for waterbirds. In this case,

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a numeric standard for selenium is necessary to protect the function of wetlands as wildlife habitat as described in the proposed 20.6.4.13. Therefore, we recommend that rather than excluding wetlands from the 20.6.4.900 criteria for wildlife habitat, that those criteria also be applied to these crucial surface waters.

Thank you for this opportunity to comment on the Public Review Draft for the 2026 Triennial Review.

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