REGION 6
DALLAS, TX 75270

October 9, 2025

Michael Baca
Standards, Planning & Reporting Team Leader
Surface Water Quality Bureau
New Mexico Environment Department
1190 S. St. Francis Dr.
Santa Fe, NM 87505

Re: New Mexico Environment Department 2026 Triennial Review Public Draft – 20.6.4 NMAC

Dear Mr. Baca:

In response to the New Mexico Environment Department (NMED) announcement and extended public comment period on proposed revisions to the New Mexico *Standards for Interstate and Intrastate Surface Waters*, 20.6.4 New Mexico Administrative Code (NMAC), the Environmental Protection Agency (EPA) Region 6 would like provide comments and recommendations as part of the state's 2026 triennial review process.

The NMED's proposal includes both substantive and non-substantive revisions to New Mexico's water quality standards. The EPA has provided comments and recommendations on the substantive revisions where appropriate. The substantive revisions included definitions that influence implementation, regulatory segment and designated use determinations, and a number of new and revised criteria. The comments and recommendations provided in the enclosed document are intended to address these and other complex issues that may need to be addressed in incremental stages through the state's water quality standards and associated implementation over time. We would like to encourage discussions about these recommendations and suggestions as part the current and future water quality standards program-related planning. Where non-substantive revisions occur, typically grammatical, renumbering or other minor changes that do not alter the context or meaning of a provision, comments are typically not necessary.

It should be noted that the recommendations and suggestions provided here are preliminary and do not represent a finding under §303(c) of the Clean Water Act or Standards Regulation (40 CFR 131). Any decisions on new and revised water quality standards will be made by the EPA Region 6 following their adoption by the New Mexico Water Quality Control Commission and submission to the Region. The EPA would also like to take this opportunity to commend the NMED and the Surface Water Quality Board's efforts in the continuing development of New Mexico's water quality standards program. I look

forward to continuing work with you and your staff on the protection of New Mexico's water resources. If you have any questions, please contact Jasmin Diaz-Lopez at diazlopez.jasmin@epa.gov or (214) 665-2733.

Sincerely,

SELENA MEDRANO

Digitally signed by SELENA MEDRANO
Date: 2025.10.09 12:57:01 -05'00'

Selena Medrano
Acting Section Supervisor

Enclosure: EPA COMMENTS ON THE NEW MEXICO ENVIRONMENT DEPARTMENT'S PROPOSED TRIENNIAL REVISIONS TO THE STANDARDS FOR INTERSTATE AND INTRASTATE SURFACE WATERS (20.6.4 NMAC)

cc: Shelly Lemon, Chief, Surface Water Quality Bureau, New Mexico Environment Department (Shelly.Lemon@env.nm.gov)
Lynette Guevera, Program Manager - Monitoring, Assessment, and Standards Section, New Mexico Environment Department, (lynette.guevara@env.nm.gov)

EPA COMMENTS ON THE NEW MEXICO ENVIRONMENT DEPARTMENT'S PROPOSED TRIENNIAL REVISIONS TO THE STANDARDS FOR INTERSTATE AND INTRASTATE SURFACE WATERS (20.6.4 NMAC)

The following detail the Environmental Protection Agency's (EPA) comments and recommendations on the New Mexico Environment Department's (NMED) proposed revisions to the state's Standards for Interstate and Intrastate Surface Waters (20.6.4 NMAC). It should be noted that the comments and recommendations provided here or in any enclosures are preliminary and do not represent a finding under Section 303(c) of the Clean Water Act (CWA) or the Standards Regulation (40 CFR 131). Any decisions on new and revised water quality standards will be made by the EPA following their adoption and submission to Region 6 for review by the New Mexico Water Quality Control Commission (WQCC or Commission).

General Comments

As cited in new proposed language at NMAC 20.6.4.10(A), § 303(c)(1) of the CWA requires that "the Governor of a State or the State water pollution control agency of such State shall from time to time (but at least once each three year period beginning with October 18, 1972) hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards." The CWA requirement means that for a state's review to be considered a triennial review, the state must open the entirety of a state's water quality standard(s) (WQS) and solicit comments on the entire document.

For future triennial reviews, the EPA recommends that the NMED ensure a hearing that is open to the general public for the purpose of reviewing New Mexico's WQS is held three years from the date of the state's prior hearing to review its WQS to meet the requirement in § 303(c)(1) of the CWA. The purpose of this review is to, at a minimum, identify WQS changes necessary to meet the requirements of the CWA. This includes the requirement in 40 CFR § 131.20(a) to re-examining any waterbody segment with designated uses less than the CWA § 101(a)(2) uses to determine if those designations are still appropriate.

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 6 WATER QUALITY
PART 4 STANDARDS FOR INTERSTATE AND INTRASTATE SURFACE WATERS

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.

The EPA previously commented on the need to clarify this definition in its January 2023 303(c) Action Letter regarding its applicability. Given that the 4Q3 is hydrologically based for NMED, the proposed revision in appropriate.

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.

(45) "Turbidity" is an expression of the optical property in water that causes incident light to be scattered or absorbed rather than transmitted in straight lines.

The EPA recommends adding "or water quality variance as defined by 40 CFR 131.3(o)" to the end of the definition for "temporary standard".

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.

The EPA has no comment on this revision.

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 condition necessary to protect the existing uses shall be maintained and protected in all surface waters of the state. Wetland condition is a measure of ecological integrity and, by inference, wetland quality (i.e., functions) and quantity (i.e., acreage).

(2) Where wetland condition 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, 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 wetland condition, 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 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 and all cost-effective and reasonable BMPs for nonpoint

source control. 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, 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.

The EPA has no comment on this revision.

20.6.4.10 REVIEW OF STANDARDS; NEED FOR ADDITIONAL STUDIES:

~~F~~G. **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 the state. 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.

(~~3~~7) Any person may petition the commission to adopt site-specific criteria. A petition for the adoption of site-specific criteria shall:

(a) identify the specific waters to which the site-specific criteria would apply;

(b) explain the rationale for proposing the site-specific criteria;

(c) describe the methods used to notify and solicit input from potential stakeholders and from the general public in the affected area, and present and respond to the public input received;

(d) present and justify the derivation of the proposed criteria.

(48) A derivation of site-specific criteria shall rely on a scientifically defensible method, such as one of the following:

(a) the recalculation procedure, the water-effect ratio for metals procedure or the resident species procedure as described in the water quality standards handbook (EPA-823-B-94-005a, 2nd edition, August 1994);

(b) the streamlined water-effect ratio procedure for discharges of copper (EPA 822R-01-005, March 2001);

(c) the biotic ligand model as described in aquatic life ambient freshwater quality criteria - copper (EPA-822-R-07-001, February 2007);

(d) the methodology for deriving ambient water quality criteria for the protection of human health (EPA-822-B-00-004, October 2000) and associated technical support documents; or

(e) a determination of the natural background of the water body as described in Subsection G of 20.6.4.10 NMAC.

The EPA supports the proposed revisions to 20.6.4.10 G that clarify the required process the NMED will use in establishing site-specific criteria.

The EPA continues to have concerns with subsection 20.6.4.10 G.(1)(e) from the state's 2011 triennial revisions and previously took no action on this definition under CWA § 303(c), meaning that it is not effective for CWA purposes. The EPA continues to have concerns with the undefined factors or combination of factors that may warrant modifications to default criteria. The EPA welcomes additional information that explains how additional factors will be considered when reviewed by the commission and how they will be applied to existing federal regulatory structure to assist in its determination.

20.6.4.11 APPLICABILITY OF WATER QUALITY STANDARDS:

G. 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.

The EPA supports the proposed revisions to 20.6.4.11.G to remain consistent with language in 20.6.4.900(H)(7)NMAC.

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.

The EPA supports the proposed revisions to 20.6.4.12.F to remain consistent language in 20.6.4.900.I NMAC.

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.

In the last sentence of the proposed revision for 20.6.4.13, the EPA suggests that NMED clarify whether wetlands are being assigned these uses (recreation, wildlife habitat, aquatic life, and livestock) or that wetlands may be assigned any one of these uses.

20.6.4.15 USE ATTAINABILITY ANALYSIS:

B. 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.

The EPA supports the proposed revisions to 20.6.4.15.B which includes additional reference material for developing a use attainability analysis. However, the EPA recommends that NMED repeats the "latest edition" language for all of their reference documents, including bullet (4), for the purposes of minimizing updates in this section.

20.6.4.15 USE ATTAINABILITY ANALYSIS:

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.

The EPA supports the proposed revisions to 20.6.4.15.D which includes clarifying language for amending a designated used through a use attainability analysis.

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: 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.

The EPA supports the proposed revisions to 20.6.4.135 which adds Santa Cruz Lake to the Rio Grande Basin with primary contact use. However, EPA recommends the following edits to clarify the distinction in criteria between Bluewater lake and Santa Cruz lake:

*"**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: phosphorus (unfiltered sample) 0.1 mg/L or less is applicable to Bluewater lake only; the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less is applicable to both lakes."*

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.

According to 40 CFR 131.10(k) a UAA is not required when designating uses that include the uses specified in CWA Section 101(a)(2), when designating a subcategory of a 101(a)(2) use that requires criteria at least as stringent as previously applicable, or when removing or revising a non-101(a)(2) use. Since the use change from secondary contact to primary contact is more stringent, the EPA supports the proposed revisions to 20.6.4.206 which removes perennial reaches of tributaries to the Rio Hondo downstream of Bonney canyon from this segment and adds them to 20.6.4.231 NMAC which has a primary contact designated use.

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.

The EPA supports the proposed revisions to 20.6.4.213 which changes the designated use from secondary contact to primary contact for McAllister lake. Similar to proposed revisions in 20.6.4.206, no UAA is necessary for this change.

20.6.4.219 PECOS RIVER BASIN: Avalon reservoir.

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.

The EPA supports the proposed revisions to 20.6.4.219 which changes the designated use from secondary contact to primary contact for Avalon reservoir. Similar to proposed revisions in 20.6.4.206 and 20.6.4.213 no UAA is necessary for this change.

20.6.4.231 PECOS RIVER BASIN: The main stem of the Pecos river from the headwater of Brantley resrvoir upstream to Salt creek (near Acme), the 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.

The EPA supports the proposed revisions to 20.6.4.231 which results from changes to the designated use from secondary contact to primary contact for all perennial reaches of Rio Hondo and tributaries downstream of Bonney canyon. Similar to proposed revisions in 20.6.4.206, 20.6.4.213, and 20.6.4.219 no UAA is necessary for this change.

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.

The EPA supports this revision which clarifies this segment of Coyote Creek, from Mora River to Amola Ridge, is meeting the marginal coldwater aquatic life use in 20.6.4.307 while the segment of Coyote Creek upstream of Amola Ridge in 20.6.4.309 is meeting high quality coldwater aquatic life use.

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.

The EPA supports the proposed revisions to 20.6.4.308 which results from changes to the designated use from secondary contact to primary contact for Charette lakes. Similar to the proposed revisions in 20.6.4.206, 20.6.4.213, 20.6.4.219, and 20.6.4.231, no UAA is necessary for this use change.

20.6.4.309 CANADIAN RIVER BASIN: The Mora river and all 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.

A. 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.

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 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.

The EPA supports this revision which clarifies this segment of Coyote Creek, perennial reaches and tributaries upstream of Amola ridge, are meeting high quality coldwater aquatic life use and should be excluded from 20.6.4.307.

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.

The EPA agrees with the NMED's basis for removing warmwater aquatic life. As specified in 40 CFR 131.10(k)(2) a UAA is not required when designating a subcategory of a 101(a)(2) use that requires criteria at least as stringent as previously applicable. Removing the less stringent warmwater criteria use will result in no changes to the applicable 101(a)(2) criteria given that the more stringent criteria, coldwater aquatic life, remains. However, the EPA suggests adding "temperature" before "28°C", to remain consistent with other segment specific criteria.

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.

The EPA supports the revision to 20.6.4.503 given that existing data indicates segment-specific temperature criterion of 29°C (84°F) is existing and attainable for East Fork Gila River and Sapillo Creek

downstream of Lake Roberts. As specified in 40 CFR 131.10(k)(2) a UAA is not required when designating a subcategory of a 101(a)(2) use that requires criteria at least as stringent as previously applicable. However, the EPA suggests adding "temperature" before "29°C", to remain consistent with other segment specific criteria.

20.6.4.900 CRITERIA APPLICABLE TO EXISTING, DESIGNATED OR ATTAINABLE USES UNLESS OTHERWISE SPECIFIED IN 20.6.4.97 THROUGH 20.6.4.899 NMAC:

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.

The EPA recommends NMED consider retaining the language in 20.6.4.900 D. proposed for deletion. The frequency and duration aspects of criteria are important to help define the desired condition of the state's waters and ensure that the designated use is protected by the criteria. If NMED finds that its current frequency and duration are not appropriate, it should provide a scientifically sound basis for a revised frequency and duration that are protective of New Mexico's primary contact designated use. For example, please see the EPA's 2019 Recommended Human Health Recreational Ambient Water Quality Criteria or Swimming Advisories for Microcystins and Cylindrospermopsin, which explains how the frequency and duration aspects of the EPA's 304(a) recommended criteria are protective of primary contact recreation. The EPA welcomes discussions with NMED to develop a revised frequency and duration, and recognizes that these water quality standards can always be revised in future rulemakings if NMED determines that evolving science or new data suggest that a revision is necessary.

20.6.4.900

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. In addition, the specific criteria for aquatic life subcategories in the following paragraphs apply to waters classified under the respective designations.

(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.

The EPA supports the proposed pH criteria applicable to limited aquatic life.

20.6.4.900.

J. Use-specific numeric criteria.

Pollutant	CAS Number	DWS	Irr/Irr storage	LW	WH	Aquatic Life			Type
						Acute	Chronic	HH-OO	
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	7440-02-0	700				a	a	4,600	P
Nitrate as N (mg/L)		10 ~~mg/L~~							
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

The EPA's national CWA section 304(a) recommended selenium criterion is composed of four criterion elements: two fish tissue criterion elements (i.e., egg-ovary and whole-body and/or muscle tissue) and two water column criterion elements (i.e., 30-day average and intermittent exposure). Currently, NMED is proposing to adopt the fish whole-body and muscle criteria, which together make up one of the two fish tissue criterion elements.

The EPA recommends that NMED considers adopting the egg ovary criterion and the intermittent exposure criterion elements. The egg-ovary criterion element supersedes all other criterion elements because it was derived directly from toxicity data and served as the basis for deriving all the other criterion elements. This hierarchy can be described in a state or authorized Tribe's WQS, in footnotes accompanying the criterion. For example, NMED can use the footnotes provided with the national CWA section 304(a) recommended selenium criterion (Table 1) to clearly and accurately describe the hierarchical structure. Another possibility is adopting the selenium criteria table as a separate section within 20.6.4.900 NMAC for clarity.

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	930-55-2							340	C
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		P

Pollutant	CAS Number	DWS	Irr/Irr storage	LW	WH	Aquatic Life			Type
						Acute	Chronic	HH-OO	
Perfluorooctanoic acid (PFOA)	Various					3,100	100 in water 1.18 mg/kg Wet Weight in Invertebrate Whole-Body Tissue 6.49 mg/kg Wet Weight Fish Whole-Body Tissue 0.133 mg/kg Wet Weight Fish Muscle Tissue		P

The EPA supports the proposed adoption of 304(a) aquatic life criteria for PFOS and PFOA. However, the EPA suggests that NMED consider designating a separate Subsection within 20.6.4.900 NMAC for these criteria in an effort to retain consistency with the criteria units and clarity between the different chronic values. Additionally, NMED could include a footnote that notes all five of these water column and tissue criteria are intended to be independently applicable and one criterion does not take primacy.