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STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION

IN THE MATTER OF:
THE PETITION TO AMEND 20.6.4.97 NMAC
TO MODIFY DESIGNATED USE OF
THE RIO GRANDE TO FOUR HILLS
BRIDGE REACH OF THE TIJERAS ARROYO

WQCC No. 25-28 (R)

National Technology & Engineering Solutions of Sandia, LLC.,

Petitioner.

WATER QUALITY CONTROL COMMISSION'S STATEMENT OF REASONS AND FINAL ORDER FOR ADOPTION OF AMENDMENTS TO 20.6.4.97 NMAC

A duly constituted quorum of the Water Quality Control Commission ("Commission" or "WQCC") having met on December 9, 2025, in a public meeting to deliberate and issue its decision on proposed amendments to New Mexico's Standards for Interstate and Intrastate Surface Waters, 20.6.4 NMAC ("Part 4") modifying the designated use of the Rio Grande to Four Hills Bridge reach of the Tijeras Arroyo, the Commission issues this Statement of Reasons and Final Order.

I. STATEMENT OF REASONS

I. Jurisdictional Authority and Statutory and Regulatory Requirements

1. In accordance with federal Clean Water Act (CWA) and its implementing regulations, each State is responsible for reviewing, establishing, and revising water quality standards. 33 U.S.C. § 1313(c); 40 CFR § 131.4(a). "States must specify appropriate water uses to be achieved and protected." 40 CFR § 131.10. "States adopt water quality standards to protect public health or welfare, enhance the quality of water, and serve the purposes of the [CWA]." 40 CFR § 131.2.

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2. "A water quality standard defines the water quality goals for a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria that protect the designated uses." *Id*.

3. Under the New Mexico Water Quality Act (WQA), NMSA 1978, §§ 74-6-1 to 74-6-17, the Commission is required to adopt water quality standards for surface and ground waters of the State of New Mexico "based on credible scientific data and other evidence," including the designated uses of the waters and "the water quality criteria necessary to protect such uses." NMSA 1978, § 74-6-4(D).

4. States must also hold public hearings for the purpose of reviewing applicable water quality standards, and, as appropriate, modify those standards. 33 U.S.C. § 1313(c). Whenever a State revises or adopts a new standard, it must meet the requirements and purposes of the federal Clean Water Act and be submitted to EPA for approval. *Id*.

5. The WQCC has adopted water quality standards for surface waters in New Mexico. *See* 20.6.4 NMAC.

6. The WQCC "…may remove a designated use, that is not an existing use, …only if a use attainability analysis demonstrates that attaining the use is not feasible because of a factor listed in 40 CFR 131.10(g)." 20.6.4.15(A)(1) NMAC.

7. If a UAA demonstrates "that the designated use is not attainable based on one of the factors in 40 CFR 131.10(g), the UAA shall demonstrate the support for removing the designated use and then it must determine the highest attainable use, as defined in 40 CFR 131.3(m), for the protection and propagation of fish, shellfish and wildlife and recreation in and on the water." 20.6.4.15(C) NMAC.

Docusign Envelope ID: D380F759-E3FF-4FFF-8CE4-8FE405530521

8. In accordance with 20.6.4.15(E) NMAC, any person may submit notice to NMED stating their intent to conduct a UAA. When a UAA is conducted by third parties, New Mexico regulations require the development of a work plan with minimum required elements, and approval of the work plan by the Department, prior to conducting a UAA. 20.6.4.15(E) NMAC.

9. Adoption of amendments to the State's surface water quality standards must comply with the substantive and procedural requirements of Section 74-6-6 of the WQA and with the procedural requirements of 20.1.6 NMAC for rulemakings before the Commission.

10. New Mexico caselaw provides:

> In adopting a new rule, an administrative agency is required to provide a statement of reasons for doing so. Although formal findings are not required, the record must indicate the reasoning of the Commission and the basis on which it adopted the rule. The Commission need not state its reasons for adopting each provision in a rule or respond to all concerns raised in testimony; such a requirement would be unduly onerous and unnecessary for the purposes of appellate review. [The courts] require only that the public and the reviewing courts are informed as to the reasoning behind the rule.

Earthworks' Oil & Gas Accountability Project v. New Mexico Oil Conservation Comm'n, 2016-NMCA-055, ¶ 12, 374 P.3d 710 (citations omitted).

II. Petition to Amend 20.6.4.97 to Modify the Designated Use of the Rio Grande to Four Hills Bridge Reach of the Tijeras Arroyo

11. Pursuant to the WQA and the Commission's regulations, National Technology & Engineering Solutions of Sandia, LLC., ("NTESS" or "Petitioner") initiated this proceeding on June 4, 2025, by filing a Petition for Rulemaking to amend the New Mexico WQCC's Standards for Interstate and Intrastate Surface Waters, 20.6.4 NMAC ("Part 4").

12. The Petition asked the WQCC to add the Rio Grande to Four Hills Bridge reach of the Tijeras Arroyo (AU NM-9000.A_070) to the list of ephemeral waters under the Rules. *See* 20.6.4.97 NMAC. Pursuant to 20.1.6.200(B) NMAC, the entire rule, including the proposed regulatory change, was attached to the petition as Petitioner's Exhibit A.

Docusign Envelope ID: D380F759-E3FF-4FFF-8CE4-8FE405530521

13. Petitioner's proposed changes to 20.6.4.97 NMAC were as follows:

20.6.4.97 EPHEMERAL WATERS:
Ephemeral surface waters of the state as identified below and additional ephemeral waters as identified on the department's water quality standards website pursuant to Paragraph (2) of Subsection D of 20.6.4.15 NMAC are subject to the designated uses and criteria as specified in this section. Ephemeral waters classified in 20.6.4.101-899 NMAC are subject to the designated uses and criteria as specified in those sections.
A. Designated uses: livestock watering, wildlife habitat, limited aquatic life and secondary contact.
B. Criteria: the use-specific criteria in 20.6.4.900 NMAC are applicable to the designated uses.
C. Waters:
(1) the following waters are designated in the Rio Grande basin:
…
(o) Tijeras Arroyo, from Rio Grande to Four Hills Bridge.

14. The Petition reflected the culmination of Petitioner's data collection and analysis, as well as agency and public engagement spanning many years.

15. Mr. Nicholas R. Maxwell, a non-petitioning party, entered an appearance on June 11, 2025, and participated in the rulemaking proceeding.

16. The New Mexico Environment Department ("NMED" or "Department"), a non-petitioning party, entered its appearance on July 15, 2025, and subsequently participated in the rulemaking proceeding.

17. No other party entered an appearance, and no party opposed the rulemaking proceeding.

18. The Petition came before the Commission for consideration during its regularly scheduled meeting on July 8, 2025. After duly considering the Petition, and being otherwise sufficiently advised in the premises, the Commission determined that a public hearing should be held on the Petition in accordance with 20.1.6.200(C) NMAC.

19. On July 9, 2025, the Commission issued an Order Designating Hearing Officer. In the Order, the Commission designated Felicia Orth as the Hearing Officer for the public hearing

Docusign Envelope ID: D380F759-E3FF-4FFF-8CE4-8FE405530521

with all powers and duties prescribed or delegated by the Commission under the WQA and 20.1.6.100 NMAC.

20. On August 26, 2025, the Hearing Officer issued a Pre-Hearing Order, setting the rulemaking proceeding for a public hearing to begin on October 14, 2025, and continuing as necessary to hear all testimony, evidence, and public comment.

21. Due to concerns regarding the timeframe of public notice, NTESS requested that the rulemaking hearing be rescheduled to allow sufficient time for an updated notice to be published pursuant to 20.1.6.201 NMAC.

22. On October 22, 2025, the Hearing Officer issued a second Pre-Hearing Order, setting the rulemaking proceeding for a public hearing to begin on December 9, 2025, continuing as necessary to hear all testimony, evidence, and public comment.

23. On November 19, 2025, Petitioner and NMED submitted their respective Notices of Intent to Present Technical Testimony at the public hearing.

24. No other party filed a Notice of Intent to Present Rebuttal Testimony.

25. NMED provided affidavits of publication of public notice for the rescheduled rulemaking hearing for the *Albuquerque Journal*, *Los Alamos Daily Post*, and the *New Mexico Register*. **NMED Exhibit 15.**

26. NMED completed the "provide to the public" notice requirements for the rescheduled rulemaking hearing, as outlined in 20.1.6.7(P) NMAC, on or before October 10, 2025. **NMED Exhibits 1, 16, and 17.**

27. A hybrid public hearing was held on December 9, 2025, and conducted in-person in Room 309 at the New Mexico State Capitol, 490 Old Santa Fe Trail, in Santa Fe, New Mexico and remotely via the WebEx platform.

Docusign Envelope ID: D380F759-E3FF-4FFF-8CE4-8FE405530521

28. The Commission duly heard and considered testimony on behalf of Petitioner and NMED and allowed opportunity for any member of the general public to testify at the public hearing, and to offer non-technical exhibits in connection with their testimony, or to submit a written statement for the record, in lieu of providing oral testimony at the hearing.

29. Hearing Officer Orth conducted the public hearing in a fair and equitable manner, providing a reasonable opportunity for all persons to be heard and allowing all interested persons a reasonable opportunity to submit data, views or arguments orally and in writing, and to examine the Parties' individual witnesses.

30. Consistent with 20.1.6.306(A) NMAC, a quorum of the Commission attended the hearing, the public notice indicated that a decision might be made at the conclusion of the hearing, and the Commission immediately deliberated and made a decision on Petitioner's proposed amendments to 20.6.4 NMAC at the conclusion of the hearing on December 9, 2025.

31. After deliberation, the Commission unanimously voted to adopt Petitioner's proposal to amend 20.6.4.97 NMAC. **Transcript ("Tr.") 93:20-21.**

32. Based upon the evidence and argument in the record, the following Statement of Reasons sets forth how the Commission considered and weighed the evidence presented and considered legal arguments in this matter with respect to adoption of changes to New Mexico's Water Quality Standards at 20.6.4 NMAC.

REASONS FOR COMMISSION'S DECISION

A. Background

33. The Rio Grande to Four Hills Bridge (AU NM-9000.A_070) is an 11.49 mile reach of the Tijeras Arroyo. **NTESS Ex. 3 at 5.** The Tijeras Arroyo is located in the Tijeras Arroyo

Docusign Envelope ID: D380F759-E3FF-4FFF-8CE4-8FE405530521

Watershed and Tijeras Arroyo is the main surface drainage feature of the Watershed. **NTESS Ex. 3 at 5 and 7.**

34. The Rio Grande to Four Hills Bridge reach of the Tijeras Arroyo is an unclassified water of the state and has been historically designated as an intermittent water. *See* 20.6.4.7(U)(1) NMAC and 20.6.4.98 NMAC. In 2009, as part of the State of New Mexico Clean Water Act Integrated Report, a *Hydrology Protocol* survey indicated that the Tijeras Arroyo Rio Grande to Four Hills Bridge reach is an ephemeral water.

35. Under 20.6.4.15 NMAC, the Commission may remove a designated use that is not an existing use, as specified in Section 101(a)(2) of the federal Clean Water Act, or adopt subcategories of a use in Section 101(a)(2) of the federal Clean Water Act requiring less stringent criteria, only if a use attainability analysis demonstrates that attaining the use is not feasible because of a factor listed in 40 CFR 131.10(g).

B. Petitioner's Use Attainability Analysis Followed a Work Plan Approved by NMED

36. On June 20, 2017, NTESS submitted a draft Work Plan, dated May 5, 2017, to the Department. **NTESS Ex. 4; NTESS Ex. 12 at 15.** After multiple revisions, *see* **NTESS Ex. 5; NTESS Ex. 12 at 15**, the approved UAA Work Plan identified as the primary focus of the UAA inquiry, the second factor of 40 CFR 131.10(g), whether "natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use."

37. In accordance with 20.6.4.15(E) NMAC, the Approved Work Plan identified multiple lines of evidence that would be considered, data proposed to be used, and established framework for stakeholder outreach, public engagement, and consultation with appropriate state and federal entities. **NTESS Ex. 5.**

Docusign Envelope ID: D380F759-E3FF-4FFF-8CE4-8FE405530521

38. In accordance with the Approved Work Plan, Petitioners conducted stream channel surveys using the Department's *Hydrology Protocol* methods from June 17-28, 2019. ***Id.* at 18.**

39. In accordance with the Approved Work Plan, Petitioners prepared and submitted a draft Use Attainability Analysis ("UAA") to the Department, dated December 18, 2019, on June 8, 2020. **NTESS Ex. 14.** After multiple revisions and verbal review comments from the Department, *see* **NTESS Ex. 15; NTESS Ex. 3 at 6**, a revised Work Plan, dated January 2023, was submitted to the Department and was subsequently approved by the Department on March 8, 2023. **NTESS Ex. 3 at 6**.

C. Petitioner's Use Attainability Analysis Provides Reliable and Scientifically Supported Evidence that the Rio Grande to Four Hills Bridge Reach of the Tijeras Arroyo should be Designated as an Ephemeral Water.

40. Petitioner's UAA supports the conclusion that the Rio Grande to Four Hills Bridge reach of Tijeras Arroyo exhibits characteristics of an ephemeral waterbody**. NTESS Ex. 3 at 25**. This conclusion is supported by historic and recent hydrologic, geomorphic, and ecologic indicators of flow. ***Id*.** This conclusion is also supported by the NMED *Hydrology Protocol* method for differentiating between ephemeral and intermittent waterbodies based on hydrological, geomorphic, and biological indicators . ***Id.***

41. There are no other known permitted or unpermitted discharges to the reach (NPDES or otherwise). Geology is the primary factor that causes the Rio Grande to Four Hills Bridge reach of Tijeras Arroyo to be ephemeral. The thick sequence of unconsolidated sediment in the Albuquerque Basin and the deep-water table promote rapid infiltration of surface water, depleting any base flows that might originate from the shallow bedrock water table located upstream. ***Id.* at 26**.

Docusign Envelope ID: D380F759-E3FF-4FFF-8CE4-8FE405530521

42. The *Hydrology Protocol* method for stream surveys was also used to evaluate the reach. There were no water, fish, macroinvertebrates, algae, hydric soils, seeps, springs, or iron-oxidizing bacteria found anywhere in the reach. Geomorphic characteristics of the subject reach—including channel structure, substrate sorting, floodplain dimensions, and sinuosity—were all indicative of ephemeral characteristics. Vegetation within and adjacent to the reach is similar in composition to upland vegetation outside the active floodplain. No riparian zones were encountered. The vegetation was characteristic of ephemeral conditions. *Hydrology Protocol* scores for individual sub-reaches ranged from 4.0 to 8.0. The average score for the entire reach was 6.1. The *Hydrology Protocol* guidelines indicate that a score of 9 or less is an indication of ephemeral conditions. ***Id.***

D. NMED Supports Petitioner's Proposed Amendments and the Commission Finds that Petitioner's Proposed Amendments are Supported

43. NMED supported Petitioner's proposed amendments to 20.6.4.97 NMAC. **NMED Ex. 1 at 12.**

44. The Commission finds that the testimony and conclusions of Petitioner's witness, Mr. John Kay, and NMED's witness, Ms. Stephani Clark Barkalow, are credible and that the weight of evidence supports adoption of Petitioner's proposed amendments to New Mexico Water Quality Standards at 20.6.4 NMAC, *Standards for Interstate and Intrastate Surface Waters*.

E. Other Rulemaking Matters

45. The Commission authorizes the Department to address any numbering changes, grammatical errors, or non-substantive typographical mistakes that may be necessary in connection with the final changes to the surface water quality standards adopted herein by the Commission.

Docusign Envelope ID: D380F759-E3FF-4FFF-8CE4-8FE405530521

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

BASED ON THE FOREGOING REASONS, IT IS DECIDED AND ORDERED:

A. The Commission hereby approves and adopts the Petitioner's Proposed Final Rule with any non-substantive amendments necessary for filing with the State Records Center and Archives (SRCA), in accordance with applicable SRCA procedures.

B. This Statement of Reasons constitutes the written decision of the Commission's actions on the proposed regulatory changes in this rulemaking proceeding, and the reasons for those actions. Other written or oral statements by the Commission members are not recognized as part of the Commission's official decision or reasons.

C. The Commission directs the Department to prepare the amendments to the Commission's surface water quality standards at 20.6.4 NMAC, titled "Standards for Interstate and Intrastate Surface Waters," in a format acceptable to the State Records Administrator for filing as part of the New Mexico Administrative Code. This preparation may include re-numbering and re-lettering of existing sections of the surface water quality standards and correcting any errata consistent with this Statement of Reasons.

D. The rule amendment adopted by the Commission shall become effective no less than thirty days after its filing in accordance with the provisions of the State Rules Act. NMSA 1978, Section 74-6-6(E). In accordance with 1.24.10.16(E) NMAC, no rule shall be valid and enforceable until it is filed with SRCA's Administrative Law Division and published in the *New Mexico Register*. To ensure both requirements of 1.24.10.16(E) NMAC have been met, this rule will be effective no earlier than its publication in the *New Mexico Register* or thirty days from filing with the Administrative Law Division, whichever comes later.

Docusign Envelope ID: D380F759-E3FF-4FFF-8CE4-8FE405530521

Issued this ____ day of _____, 2026.

Water Quality Control Commission

Signed by:
Bruce Thomson
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2/6/2026

By: Bruce Thomson, Chair

Date