2020-2022
State of New Mexico
Clean Water Act
§303(d)/§305(b)
Integrated Report

Appendix C

Response to Comments

Prepared by:
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RESPONSE TO COMMENTS

ON THE
2020-2022 STATE OF NEW MEXICO
CLEAN WATER ACT
§303(d)/§305(b)
INTEGRATED LIST OF ASSESSED SURFACE WATERS

December 8, 2020

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PLEASE NOTE:

Original letters and emails were converted to Microsoft Word. All submitted comments were converted to Calibri font with standard page margins for ease of collation. All original comment letters/emails are on file at the SWQB office in Santa Fe, NM.

MINOR CHANGES TO THE DRAFT 2020-2022 INTEGRATED LIST (Appendix A of the Integrated Report) BASED ON ADDITIONAL SWQB STAFF REVIEW DURING THE PUBLIC COMMENT PERIOD

1. Two drains – **North Diversion Channel (Rio Grande to outfall)** and **Lower Peralta Drain (Rio Grande to outfall)** - were erroneously included as unassessed Assessment Units (AUs) in the public comment draft Integrated List due to a database entry error. These two unassessed AUs have been removed from the Integrated List.
2. Although it was noted in the associated Assessment Rationale, the newly identified temperature impairment for **Gallegos Canyon (San Juan River to Navajo bnd)** was inadvertently not added to the assessment database used to generate the draft Integrated List and subsequent New Impairments review spreadsheet. It has been added.
3. Dissolved thallium was inadvertently not removed as a cause of impairment from assessment unit **Rio Grande (Cochiti Reservoir to San Ildefonso bnd)**. As noted in the Assessment Rationale, there were 0/14 exceedences of the dissolved thallium human health criterion. It has been removed.
4. Sedimentation was removed as a proposed cause of impairment for assessment unit **Bitter Creek (Red River to headwaters).** A level 2 sedimentation survey is needed to complete the assessment.
5. Sedimentation was removed as a proposed cause of impairment for assessment unit **Rio Pueblo de Taos (Arroyo del Alamo to R Grande del Rancho)**. A level 2 sedimentation survey is needed to complete the assessment.

COMMENT SET 1 – San Juan Watershed Group, Aztec, NM

Lynette Guevara
NMED Surface Water Quality Bureau
P.O. Box 5469
Santa Fe, New Mexico, 87502
September 9, 2020

Dear Ms. Guevara,

The San Juan Watershed Group would like to submit the following formal comments in response to the New Mexico Environment Department's 2020-2022 303(D)/305(B) Proposed Integrated Report.

1. The Animas River (San Juan River to Estes Arroyo and Estes Arroyo to Southern Ute Boundary) is being proposed to be de-listed for *E. coli*. A high quantity of livestock operations and on-site liquid waste management systems are present within this reach of the Animas River and the Colorado stretch of the Animas below Durango, which the SJWG has prioritized as the most probable contributions to bacteria concentrations. In accordance with the Lower Animas Watershed Based Plan, on the ground Best Management Practices and implementation have begun within these stretches to remediate non-point pollution sources with local landowners. However, we believe much work remains to be done to maintain a de-listing of the Animas River for *E. coli*.

It is understood that since a minimum of five samples were not collected within a 30-day period that monthly geometric mean thresholds for *E. coli* could not be incorporated into the analysis for the proposed de-listing. The results of the 2013-2014 Concurrent Nutrient and Bacteria Sampling Study (CNBS Study) conducted by the SJWG, San Juan Soil & Water Conservation District, and Mountain Studies Institute indicates that *E. coli* exceedances on the Animas River were predominantly over the geometric monthly mean threshold more so than the single grab sample threshold. We suggest, within reasonable resources of NMED, to expand the number of samples per water quality station to at least 5 samples within a 30-day period in the next NMED sampling event in order to include geometric monthly mean values. The following recommendations are provided based on our 2013-2014 CNBS Study results and our review of the 2017-18 Sampling Results spreadsheet.

> a. Animas River (Estes Arroyo to Southern Ute Boundary) – We believe that the de-listing of *E.coli* for this assessment unit appears to be supported based on available data and using existing NMED methodology. Based on the number of samples above the 126 MPN geometric mean threshold in the 2017-2018 dataset (2/9 below the state line and 3/10 above Estes Arroyo) and patterns in the 2013-2014 CNBS dataset (Site above Estes arroyo exceeded monthly mean three months in 2013 and two months in 2014 with few single-sample exceedances), we suspect that increased sampling frequency could lead to a continued determination of impairment using the geometric mean criteria.

***SWQB RESPONSE**: The SWQB appreciates and shares your concern regarding not being able to collect an adequate number of E. coli samples during our watershed surveys to be able to calculate geometric means. The SWQB is unable to incorporate this sampling frequency into survey design due to an on-going lack of monitoring staff resources. TMDLs remain in place, regardless of de-listings, unless there is a change in the applicable water quality criterion that warrants removal of the TMDL. The 2013 Animas E. coli TMDL remains in place, and used the geometric mean value of 126 cfu/100 mL to calculate the TMDL. The SWQB appreciates restoration efforts to date, and agrees that continued efforts are necessary to maintain a de-listing of the Animas River for E. coli.*

b. Animas River (San Juan River to Estes Arroyo) – The de-listing of *E. coli* for this assessment unit does not appear to be supported. The IR De-Listed Impairments spreadsheet indicates that 1/8 exceedances were observed at Farmington and the CR350 Bridge. However, 2/9 exceedances for a single grab sample are present at the Farmington sampling site based on the 2017-18 Sampling Results. We request that another review of the data by NMED occurs to ensure that the de-listing of *E. coli* within this stretch of the Animas River is supported. Based on these single grab exceedances and patterns of past exceedances over the 126 benchmark in the 2013-2014 CNBS dataset (3 months in 2013 and 4 months in 2014 at Boyd Park), we suspect that increased sampling frequency could lead to a continued determination of impairment using the geometric mean criteria.

***SWQB RESPONSE**: See above comments regarding sampling frequency and the continuation of the 2013 E. coli TMDL. The assessment was re-checked. There was one additional E. coli sample collected on 5/9/18, but this data point was rejected (SWQB Qualifier Code "R3") during the data verification and validation process so this data point was not included in the final assessment dataset. The de-listing is supported based on available data and using current listing methodology (NMED/SWQB 2019).*

2. Based on the Comprehensive Assessment and Listing Methodology (CALM) used by NMED for water quality sampling, data QA/QC, and impairment standards, it is understood that baseflow conditions are used to ensure water quality impairments are attained in average water year conditions. The 2013-2014 CNBS Study, as reviewed in the *Lower Animas Watershed Based Plan* on pages 41-42, indicated a relationship between spikes in *E. coli* and nutrient concentrations with stormwater runoff during the average July through October monsoon season rather than during spring runoff or baseflow. Therefore, the SJWG suggests that NMED consider data used to list and de-list assessment units to include samples from monsoon storms when concentrations are expected to be highest.

***SWQB RESPONSE**: The SWQB does incorporate data from all flow conditions into E. coli assessments (Section 2.1.5, NMED/SWQB 2019).*

3. The Animas River (San Juan River to Estes Arroyo) is being proposed to be de-listed for nutrients. Thresholds for Total Nitrogen (TN) and Total Phosphorus (TP) for this assessment unit, as updated in 2016, are 0.42 mg/L and 0.030 mg/L, respectively. It is understood that exceedances for the nutrient threshold are based on site median values that exceed TN and TP thresholds instead of total single-sample exceedances (i.e. *E.coli*). SJWG's review of 2017-18 Sampling Results concurs with no exceedances for TN, but exceedances were noted for TP, with the site median as 0.038 mg/L at CR350 and 0.033 mg/L below the CO state line. We request additional review of this water quality criteria for this assessment unit.

***SWQB RESPONSE**: The assessment was re-checked. There was one additional total phosphorus sample collected on 3/22/2017, but this data point was rejected (SWQB Qualifier Code "RB1") during the data verification and validation process so this data point was not included in the final assessment dataset. The de-listing is supported based on available data and using current listing methodology (NMED/SWQB 2019).*

4. Gallegos Canyon, Stevens Arroyo, and Shumway Arroyo are being proposed to be listed as impaired for *E.coli*. The SJWG agrees with this listing based off previous sampling conducted by the SJWG and NMED. Thank you for assessing these stretches and bringing these priority areas to our attention. SJWG anticipates conducting further outreach to identify water quality concerns within these communities, and potential solutions are now being outlined in a San Juan River Needs Based Restoration Plan.

***SWQB RESPONSE**: Thank you for your comment.*

Thank you for working towards improving water quality within New Mexico and considering our comments to NMED's most recent Integrated Report. We look forward to these comments being addressed in the final report and/or through SJWG coordination.

Sincerely,

Alyssa Richmond
San Juan Watershed Group Coordinator
San Juan Soil & Water Conservation District
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COMMENT SET 2 – Los Alamos National Laboratory, Environmental Protection & Compliance Division, Compliance Programs Group, Los Alamos, NM

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Symbol:
LAUR:
Locates:

EPC-DO: 20-287
20-27030
N/A

Ms. Lynette Guevara
Environmental Scientist
New Mexico Environment Department
Surface Water Quality Bureau
P.O. Box 5469
Santa Fe, NM 87502

Subject: Los Alamos National Laboratory (LANL) Response to NMED Request for Comment - 2020-2022 State of New Mexico CWA §303(d) / §305(b) Integrated Report (IR)

Dear Ms. Guevara:

In response to NMED's request for comment on the draft 2020-2022 State of New Mexico CWA §303(d) / §305(b) Integrated Report, Triad National Security (Triad) offers the following comments and updates:

1. Stipulated Agreement - During the last Triennial Review the United States Department of Energy (DOE) and Los Alamos National Laboratory (LANL) agreed to meet and confer with Amigos Bravos and NMED regarding the appropriate level of water quality protections for Segment 128 waters located at LANL. Since that time, and to varying degrees, NMED, DOE, Amigos Bravos and LANL have jointly participated in and completed Hydrology Protocols (HPs) on all Segment128 waters. The application of the HPs will provide documentation of the uses that may be supported by these waters as a result of their flow regime. The process to address Segment 128 waters in the Stipulated Agreement is ongoing.

   ***SWQB RESPONSE**: Thank you for your comment and update.*

2. The 2020-2022 IR includes the addition of approximately 4 miles of new Assessment Units (AU) at LANL. The AUs were identified in 2019 during joint HP assessment work conducted pursuant Stipulated Agreement. The establishment of the new AUs will provide additional measures of protection, including use attainment. It may be inappropriate to designate the water type for the new AUs as intermittent. Segment 128 Waters were established in 2005 as ephemeral/intermittent based on 2002 U.S. Fish

and Wildlife Service Study and 2007 UAA prepared by NMED and approved by EPA. Please note: the new Starmers Gulch (NM-128.A_21) may duplicate Arroyo de la Delfe (NM-128.A_16). Starmers Gulch is part of the existing AU: Pajarito Canyon (Arroyo de la Delfe to Starmers Spring).

***SWQB RESPONSE**: The WATER TYPE for Effluent Canyon was changed to STREAM, INTERMITTENT on the Integrated List (the other three new AUs were already noted as intermittent). The WATER TYPE for these waterbodies will be updated, if needed, in subsequent Integrated Lists following rulemaking planned during the 2021 Triennial Review to apply appropriate designated uses to Section 128 waters. The GIS line work errors noted above and associated mileage have been corrected.*

3. Category 4B – NMED has included the Sandia Canyon Assessment Unit NM-9000.A_047 and NM-128.A_11 Dissolved Copper, Mercury and Total Recoverable Aluminum 4B Demonstration in the 2020-2022 Draft IR. The document was updated and now includes the Sandia Canyon Storm Water Management Plan. The plan includes an extensive monitoring program that will be used to measure compliance with the 4B going forward. The plan was expanded to include the two assessment units (AU) within Sandia Canyon and incorporates dissolved copper, total recoverable aluminum and total mercury as the causes of impairment.

   ***SWQB RESPONSE**: Thank you for your comment and update.*

4. Sandia Canyon Temperature Study and Use Attainability Analysis - In July 2014 LANL initiated a stream temperature study in the upper Sandia Canyon AU (NM-9000.A_047). The study purpose was to determine if natural thermal conditions are preventing the attainment of use in the perennial reach of the Upper Sandia Canyon AU. In accordance with 20.6.4.15, LANL submitted for approval a Use Attainability Analysis (UAA) work plan for this project. The UAA Work Plan provides the framework for preparation of the UAA. NMED approved the Work Plan on April 9, 2020. The plan is based on the examination of several lines of evidence including the evaluation of air and water temperatures. The information derived from the study will be used to prepare the UAA and determine the appropriate designated use for Segment 20.6.4.126 in Sandia Canyon. The UAA is in final development.

   ***SWQB RESPONSE**: Thank you for your comment and update.*

5. NMED has responded to previously submitted comments regarding the use of unstable conditions or storm water flows in metal listings. Where appropriate, NMED has clarified that during unstable conditions metals listing are based on exceedances of acute criteria.

   ***SWQB RESPONSE**: Thank you for your comment.*

6. NMED has assigned specific impairments as 5B to acknowledge the Laboratory's on-going discussions and research regarding applicable water quality standards.

   ***SWQB RESPONSE**: Thank you for your comment.*

Thank you for the opportunity to update this information. Please contact Robert Gallegos (505) 665-0450 or by email at rgallegos@lanl.gov if you have any questions regarding these comments.

Sincerely,

Mike Saladen, for

Taunia S. Van Valkenburg
Group Leader

TVV/MTS/RMG:jdm

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COMMENT SET 3 – GEI Consultants, Inc., Denver, CO

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September 10, 2020

Lynette Guevara
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RE: Comments on the Draft 2020-2022 State of New Mexico Clean Water Act (CWA) §303(d)/§305(b) Integrated List of Assessed Surface Waters (Integrated List)

Dear Ms. Guevara,

On behalf of Chevron Mining, Inc. – Quest Mine (CMI), GEI Consultants Inc. (GEI) has reviewed the draft 2020-2022 State of New Mexico Clean Water Act (CWA) §303(d)/§305(b) Integrated List of Assessed Surface Waters (2020 Assessment) and the Assessment Rationale for the 2020 - 2022 State of New Mexico §303(d)/ §305(b) Integrated List (2020 Rationale). This letter provides comments on the rationale for listing the "Red River from Rio Grande to upstream mine boundary, AU: NM-2119_10" and our recommendations based on available data.

Site Boundary Name
In the 2016 Assessment, the New Mexico Environment Department's Surface Water Quality Bureau (SWQB) considered, but did not approve, moving the boundary of this Assessment Unit (AU), to a new location at the "Canyon Boundary." For the 2020 Assessment, the AU break was moved as considered in 2016, but the name of the new location of the break is the "upstream mine boundary." This terminology clearly delineates the location of the mine with respect to the listings in that reach, but no scientific reasoning was given in the 2020 Rationale for the change in the AU break to the mine boundary. Additionally, without GPS coordinates, it is unclear whether the actual mine boundary is in fact the new break location for the AU. To provide more clarity and an AU break that is based on the hydrology, we propose the location and name of the AU break be changed to "one mile downstream of Hansen Creek" rather than the current naming or the undefined "Canyon Boundary."

***SWQB RESPONSE**: The SWQB agrees that the AU name is ambiguous as proposed. While Hansen Creek is known by those involved with the mine and associated reclamation, it is not named on the 1:24,000 USGS topo nor formally named in the "GNIS" waterbody name field in the NHD High Resolution coverage used to create our AU coverage so would not reduce the*

ambiguity to all potential users of the Integrated List. Upon additional review, the SWQB believes the AU break should be reverted back to Placer Creek because Placer Creek is the water quality standards break point mentioned in both 20.6.4.122 and 20.6.4.123 NMAC. In addition, the Red River terminates at the confluence of the east and middle forks of the Red River. Therefore, the AU names have been changed to:

NM-2119_10 Red River (Rio Grande to Placer Creek)
NM-2120.A_710 Red River (Placer Creek to East Fork Red River)

Turbidity

In the 2020 Rationale, the SWQB reported that "Sonde data recorded exceedences of the maximum turbidity duration thresholds." Review of the data used for listing revealed the nephelometric turbidity unit (NTU) threshold was exceeded in the timeframe of the sonde's deployment from July 6 to July 19, 2018 at the SWQB's station named "Red River below Fish Hatchery near USGS - 28RedRiv005.3." During this date range, SWQB data indicates that the 3, 4, 5, and 6-day NTU thresholds were exceeded. While it is true that turbidity was elevated during this timeframe, it is important to note that several storms passed through this area during the specified dates. Data collected from the Community Collaborative Rain, Hail & Snow Network (https://www.cocorahs.org/ViewData/ListDailyPrecipReports.aspx) shows that 10 of the 13 days that rain monitoring occurred during the SWQB's specified timeframe received precipitation at Site Questa 4.5 SSW (Station number NM-TS-42), which is located south of the Village of Questa (Table 1). Additionally, USGS flow gauge data (USGS Station #08265000) shows sudden spikes in flow in the Red River (Figure 1), which are likely related to the precipitation events listed in Table 1.

Table 1. Precipitation data for Questa 4.5 SSW Station from July 6 through 21, 2018.

Date	Time	Total Precipitation (inches)
7/6/2018	9:00 AM	0.24
7/7/2018	9:00 AM	0.05
7/8/2018	9:00 AM	Trace
7/11/2018	9:00 AM	0.09
7/12/2018	9:00 AM	Trace
7/13/2018	9:00 AM	0.01
7/15/2018	9:00 AM	0.06
7/16/2018	9:30 AM	0.03
7/17/2018	8:46 AM	0.01
7/18/2018	10:31 AM	0.02
7/19/2018	9:00 AM	0
7/20/2018	9:00 AM	0
7/21/2018	8:20 AM	0

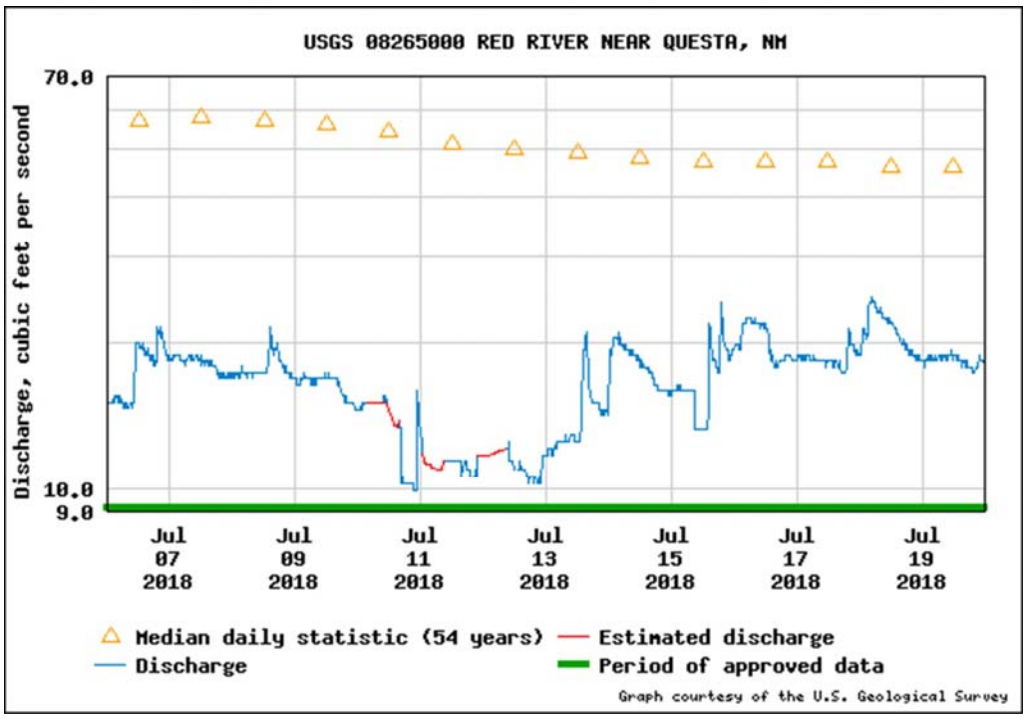

Figure 1. Flow gauge data from USGS 08265000 from July 6 to 19, 2018.

Appendix H of the SWQB's Comprehensive Assessment and Listing Methodology (CALM), Turbidity Listing Methodology For Coldwater Perennial Streams and Rivers document specifies that "all flood flow samples (i.e., high flow in response to recent precipitation) will be removed from the dataset prior to assessment." This exception is specifically listed for instantaneous or grab samples, but it is not noted for sonde or long-term data. Despite the absence of a stormflow exception for sonde or long-term data, the underlying rationale for excluding precipitation driven increases in flow, which will result in increased turbidity regardless of how the sample is collected, applies equally to sonde and long-term data. While the turbidity thresholds take this into account to some degree, it is inappropriate to use stormflow data for listing purposes. Therefore, instantaneous or long-term turbidity data collected during or after a storm event should not be used to make listing determinations.

***SWQB RESPONSE**: The assessment was re-checked. One short-term elevated spike in turbidity due to a storm event would not result in several turbidity threshold exceedences as was documented in this assessment (see listing methodology Table 1 inserted below[1], with recorded minimum turbidity values per duration). The recorded sonde data indicates several periods of prolonged elevated turbidity at this station versus only instantaneous spikes (see Figure 2 below). Also, the USGS discharge data graphed in Figure 1, above, clearly shows that flow levels were well below the median daily statistic during the period of turbidity exceedence and do not represent high flow conditions. The proposed turbidity listing remains.*

[1] https://www.env.nm.gov/wp-content/uploads/sites/25/2019/09/FINAL-CALM-APP-H-Turbidity-190903.pdf

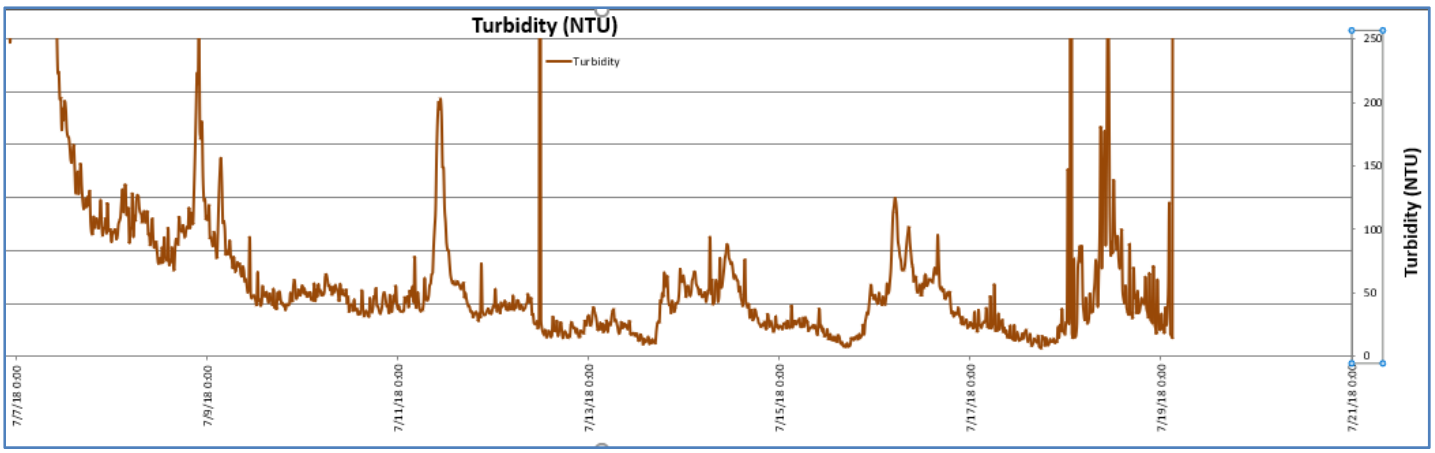

Figure 2. Red River below Hatchery (28RedRiv005.3) sonde turbidity data

Table 1. Turbidity impairment thresholds and durations at which ill effects (SEV = 3.5) are expected to occur in clear water fish, based on Newcombe (2003).

Turbidity Threshold (y) (NTUs)	28RedRiv005.3 Turbidity Minimum per Duration (*=exceedence of threshold)	Allowable Duration (x) (consecutive hours)	Allowable Duration (consecutive days)
23	**40.3***	72	3
20	**35.0***	96	4
18	**31.1***	120	5
16	**17.0***	144	6
15	12.2	168	7
11		336	14
7		720	30

Sedimentation/Siltation

According to Appendix G of the SWQB CALM, Sedimentation/Siltation Listing Methodology for Wadeable, Perennial Streams, sedimentation is assessed according to two different indicators. At Level 1, the Percent Sand and Fines (%SaFN) is assessed, and "If the measured %SaFN is greater than the applicable site class threshold in Table 3, the assessment is inconclusive and a Level 2 sedimentation survey is conducted according to the procedures in SWQB's SOPs." For the listing of this AU, the 2020 Rationale indicated that "The percent sand and fines exceeded the Level One sedimentation threshold (Level Two data not collected)." Given that a Level 1 assessment without supporting Level 2 data from the same sampling event is considered "inconclusive," the proper data were not collected to support this cause for listing, and we recommend removing this listing and further assess the site in the next cycle using the appropriate methodology.

***SWQB RESPONSE**: The SWQB agrees that both a Level 1 and Level 2 survey are necessary to complete a sedimentation assessment. The Sedimentation listing methodology will be revised to clarify this requirement. The proposed listing has been removed. Sedimentation has been noted as a parameter of concern for future surveys and the need to complete the sedimentation survey is noted in the Assessment Rationale.*

Total Recoverable Aluminum

According to the 2018 Rationale, the AU was originally listed based on data submitted by Amigos Bravos (AB) that indicated exceedences of the aluminum aquatic life criteria "on all sampling dates (7/21/14, 7/16/15, and 6/9/16) at one or more stations." Preliminary SWQB data also indicated additional exceedences. In 2020, the 2018 listing was continued "because there was more than one exceedence in a three-year period (2015-2017 data)." CMI disagrees with the current proposal to maintain the listing based on numerous factors.

The hardness method used by AB (Hach Model 5-EP MG/L #1454-01 test kit) is not the correct method for hardness, which may have led to lower hardness concentrations, underestimating the appropriate hardness-based aluminum standard for all AB datasets. The SWQB noted this in their evaluation of the data accepting the incorrect method as it would likely lead to lower than expected hardness and more conservative conditions. However, there are cases where incorrect hardness could have led to an exceedence where it would not have otherwise been. For example, the AB data from June 9, 2016 for site RR2 indicates a hardness of 80 mg/L as CaCO3 resulting in a chronic standard of 1.01 mg/L with the aluminum at the site of 1.4 mg/L (exceedence). An increase in hardness of only 22 mg/L as CaCO3 would have raised the standard to 1.41 mg/L and the measured aluminum would no longer be an exceedence of the standard.

***SWQB RESPONSE**: As stated in our Data Determination review[2], Amigos Bravos submitted concurrent total hardness data using the Hach method described above. The listing methodology at Section 3.1.2.1 states that exceedences determined with concurrent total hardness as opposed to dissolved hardness defined in 20.6.4.900(I) NMAC are allowable because higher hardness values result in higher applicable water quality criteria (NMED/SWQB 2019). In other words, the total hardness values in the Amigos Bravos data are higher than the associated dissolved hardness values would be, resulting in higher applicable water quality criteria than if dissolved hardness had been used in the 20.6.4.900(I) equations. If a total recoverable aluminum sample result exceeds a higher water quality criterion calculated using the higher (i.e., total) hardness value, it would also exceed the lower water quality criterion calculated using a lower (i.e., dissolved) hardness value. The SWQB stands by our acceptance of the total hardness data in the Amigos Bravos data set. The SWQB has offered to discuss alternative cost-effective ways for Amigos Bravos to collect concurrent dissolved hardness data equivalent to EPA's methods going forward.*

[2] *Available at: https://www.env.nm.gov/surface-water-quality/wp-content/uploads/sites/25/2018/03/2020-IR-Outside-Data-QA-Determinations_r1.pdf*

An outlier test was conducted for all sites and datasets individually. According to the CALM document, "An outlier is defined as a measurement greater than the 75th percentile (Q3) of the all measurements of a particular parameter at a site, plus three times the inter-quartile range (IQR)." The 75th percentile added to 3 times the interquartile range was 1.45 mg/L for the "above Capulin Creek" site and the exceedence data point from May 18, 2017 was 2.0 mg/L. Therefore, the data should be flagged as an outlier in the SWQB's dataset and should not be considered an exceedence.

***SWQB RESPONSE**: The assessment was re-checked. Note that the assessment method does not prescribe automatic removal of outliers. The intent of outlier detection is to draw attention to the sampling event for further review. Statistical outliers may, in fact, provide important information on watershed processes and may be appropriate to include for assessment. In the case of the total recoverable aluminum results from station 28RedRiv016.2 (Red River abv Capulin Cr.), there are SWQB results from five sampling events in the assessment dataset. Determining outliers from small datasets such as this is difficult to do with confidence; however, the measurement result of 2.0 mg/L on 5/18/2017 is above the outlier test value of 1.45 mg/L and does warrant closer evaluation. Since this sample passed all QA/QC requirements and the result is not an outlier compared to other SWQB sampling results from the Red River on 5/17/2017-5/18/2017 (n=7, Q3+IQR*3=2.45 mg/L) and was collected during stable discharge (USGS 08265000, CV=0.06), the SWQB is retaining the result for assessment.*

With the outlier excluded from the dataset, four of the ten sites in the AU exceeded the criteria based on the combined AB and SWQB datasets from May 19, 2014 through October 11, 2018. However, the data from the previous assessment cycle should not be included in the initial evaluation for the sites in 2020. According to the CALM:

> "In general, previously assessed datasets will not be re-assessed and existing assessment conclusions will be carried over onto the new draft list unless there are 1) more recent available data to add to the assessment dataset, or 2) assessment methodology for a specific parameter has significantly changed."

In this case, the provisional SWQB data supporting the 2018 listing have been finalized and AB provided additional data collected from May 2017 through October 2018. Therefore, each site should be reassessed independently based on the most recent data. The review of the new dataset identified three sites, each with a single exceedence of the chronic criteria (the AB RR2 and RR3 sites, and the SWQB "Molycorp boundary" site).

According to the CALM, attainment is evaluated individually for sites within the same AU, "the assessor will first assess data from each station individually to determine impairment(s)." The listing for toxic substances with four or more samples is based on the following criteria, "For any one pollutant, no more than one exceedence of the acute criterion in three years, and no more than one exceedence of the chronic criterion in three years." According to the listing requirements, the new data were assessed based on the previous three years of data leading

up to the 2020 listing (May 1, 2016 – May 1, 2019). When evaluating all sites individually, an additional site was added with a single exceedence in this timeframe. A summary of the results of the most recent assessment are summarized in Table 2.

Table 2. Red River sites in the AU with exceedences of the aluminum standard.

Site	Dataset	Number and date of Acute Exceedences	Number and date of Chronic Exceedences
Red River at Molycorp boundary - 28RedRiv024.4	SWQB	0	1 (5/18/17)
RR2; Goat Hill Campground	AB	0	2 (6/9/16, 5/23/17)
RR3; By the bridge @ Hwy 522	AB	1 (6/9/16)	1 (11/13/17)
RR4; Below RR Hatchery	AB	0	1 (6/9/16)

Based on these results, the Red River is not supporting the aquatic life use for the current listing cycle for a single site, "RR2, Goat Hill campground" sampled by AB which exceeded the chronic criteria twice in the three years leading up to the listing cycle. One of the datapoints pushing the site towards impairment is the aforementioned site/sample date where lower hardness is potentially skewing the standard resulting in an exceedence. It is also important to note that the May timeframe with one of the RR2 chronic exceedences and the single exceedence at the Molycorp boundary site (Table 2) were both collected during peak runoff which is not representative of long-term river conditions.

Listing is more complicated when an AU has more than one site. In this case, there are ten sites within the AU. The CALM has wording regarding AUs with multiple sites:

> "If conflicts arise and the attainment conclusions for every station in the AU are not in agreement (i.e., either all Fully Supporting or all Not Supporting), the AU as currently defined may not represent homogeneous water quality. In this case, the AU breaks should be examined and may be split appropriately, including special consideration of NPDES point source discharges, non-point source BMPs, and available water quality and GIS data. The data will then be re-assessed based on the newly-defined AUs."

Given that six of the ten sites in the AU have not had an exceedence in the 2018 or 2020 listing cycles, and the majority of the exceedences were measured by AB who was not taking appropriate hardness measurements, it is clear that listing conclusions are not in agreement from site to site.

***SWQB RESPONSE**: This description of the assessment dataset and associated exceedences is not accurate. As stated in the Data Determination for submitted Amigos Bravos (AB) data on page 4 (available at: https://www.env.nm.gov/surface-water-quality/wp-content/uploads/sites/25/2018/03/2020-IR-Outside-Data-QA-Determinations_r1.pdf), only the 6/13/2018 and 9/11/2018 aluminum data were assigned the Data Quality Level of 3 and therefore included in the 2020 assessment data set. All of the 2017 aluminum data, as well as*

the 10/11/2018 aluminum data, were assigned a Data Level of 2 and therefore not usable for assessment.

Using the same format presented above in Table 2, a summary of all of the exceedences that resulted in the continued impairment listing are provided below:

Site	Dataset	Number and date of Acute Exceedences	Number and date of Chronic Exceedences	
28RedRiv000.9	SWQB	0	1 (5/17/17)	
28RedRiv005.9	SWQB	0	1 (5/18/17)	
28RedRiv009.0	SWQB	0	1 (5/18/17)	
28RedRiv014.0	SWQB	0	1 (5/18/17)	
28RedRiv016.2	SWQB	0	1 (5/18/17)	
Red River at Molycorp boundary - 28RedRiv024.4	SWQB	0	1 (5/18/17)	
RR2; Goat Hill Campground	AB	0	1 (6/9/16, ~~5/23/17~~)	2017 AB data were rejected for assessment
RR3; By the bridge @ Hwy 522	AB	1 (6/9/16)	2 (6/9/16, 7/16/15, ~~11/13/17~~)	2017 AB data were rejected for assessment
RR4; Below RR Hatchery	AB	0	1 (6/9/16)	

Additionally, site RR2; Goat Hill Campground and the other sites with exceedences are likely influenced by groundwater seepage. On this issue, the CALM document reads:

> "If available water chemistry data from an existing station appears highly influenced by groundwater from a nearby seep or spring, the data and associated sampling procedures will be reviewed to determine appropriateness for surface water assessment. If the data are from a SWQB sampling station, the station will be relocated when possible to ensure future sampling is representative of the stream water chemistry or the equal-width increment sampling method may be utilized."

The sampling methodology for the SWQB and AB datasets were grab samples collected from the northern edge of the river in an area where groundwater seepage close to the banks of the river have been well documented. In fact, the Environmental Protection Agency, in coordination with the New Mexico Environment Department and the Energy, Minerals and Natural Resources Department mentioned in their December 6, 2017 review of CMI's Draft Tailing Facility Performance Monitoring Plan (PMP) that "Seeps and springs and groundwater

upwelling into the Red River can potentially impact the river's quality." There is a high likelihood that groundwater seepage is causing higher aluminum concentrations, which would not be representative of the AU as a whole. The equal-width increment sampling method would be more appropriate for the areas with seepage influence and would likely result in lower aluminum concentrations than grab samples collected from the edge of the river. Based on these issues with site location and sampling methodology, the sites with exceedences are not suitable sites for sampling and the data recorded at these sites are not representative of water quality throughout the AU. Therefore, data from the timeframe in question should be flagged as potentially being un- representative of conditions throughout the AU, the current listing for the AU should be removed, and the AU should be re-assessed in the next listing cycle.

Additionally, CMI's Water Treatment Plant came online in July 2017 and began discharging from Outfall 001 under NPDES permit number NM0022306 and has contributed to a change in water quality. The hardness of the discharge has increased the river hardness by approximately 50-100 mg/L as CaCO3 for the entire AU. This increase in hardness results in more protective conditions for aquatic life in the Red River for any metals that may be present in the reach. Based on the change in water quality, it is appropriate to only evaluate listing since Outfall 001 came online in July 2017, as this is the most representative of current conditions. Since the Outfall came online, only a single exceedence of the chronic aluminum standard was recorded by AB on November 13, 2017.

Finally, Red River data collected by CMI as part of the PMP under CERCLA Remedial Design/Remedial Actions verify the AU should be considered in attainment. Samples at nine sites along the mine site were collected in December 2018, August 2019, and July 2020 (Appendix A; July 2020 data have not yet been validated). All sample events followed the appropriate turbidity measurement and filtration protocol for total aluminum, the equal width sampling method was used, and all sites for both sample events were below the applicable hardness-based aluminum water quality criteria. Further, Red River sampling sites along the tailing facility were also sampled during each of these three sampling events and all samples were below applicable aluminum water quality criteria. All samples were collected under a quality assurance project plan (QAPP) which has been approved by the EPA and is available upon request.

***SWQB RESPONSE**: Regarding the data in Table A-1 (below), the 2018 data were not included in the NMED GWQB data submittal and the 2020 data are not yet validated. Inclusion of the 2018 GEI data would not change the assessment conclusion because the listing methodology at Table 3.4 states "…more than one exceedence of the chronic criterion in three years" results in a conclusion of non-support. The SWQB agrees that equal-width increment sampling method is appropriate at surface water quality monitoring stations highly influenced by nearby seeps and springs. However, SWQB monitoring stations were not located at documented spring/seepage locations (for example, Station 28RedRiv016.2 is located upstream of Spring 13). SWQB grab samples were collected according to SWQB SOP 8.2 – Chemical Sampling in Lotic Environments*[3]

[3] https://www.env.nm.gov/surface-water-quality/sop/

which states samples must be collected where the stream is flowing and well mixed. The SWQB re-evaluated total recoverable aluminum results from SWQB grab data collected at Stations 28RedRiv014.0 and 28RedRiv016.2 and Chevron equal-width data at Stations RR13, RR14, and RR16 (provided in Table A-1 below) during similar hydrologic periods. The SWQB results from 7/25-26/2017 and 9/20/2017 (0.79-0.93 mg/L) are very similar to the range of Chevron results from 8/20/2019 and 7/22/2020 (0.72-1.2 mg/L) and both datasets followed initiation of discharge from Outfall 001; therefore, there is no reason to suspect SWQB data are biased high. The SWQB notes the downward trend of total recoverable aluminum at certain water quality stations from 2014 to 2020, and upstream to downstream increase in aluminum concentrations in the Red River through the CMI Questa Mine site is also documented. Since water quality appears to be improving based on the most recent available data, the Assessment Rationale has been expanded and the IR Category has been changed to IR Category 5C (indicating the additional data are needed to confirm the listing prior to TMDL development). This assessment unit will be re-assessed for the draft 2022 Integrated List.

Conclusions

In 2020, the Red River AU Rio Grande to the upstream mine boundary is proposed for listing for sedimentation and turbidity and remained listed for total recoverable aluminum. It is our recommendation that the listing for sedimentation be removed due to inconclusive data. We believe the turbidity impairment listing is unwarranted due to the fact that several storms passed through the area during the same timeframe that turbidity was elevated, and we do not agree that data from storm events should be included in listing determinations. We also recommend removing the listing for total recoverable aluminum as all sites were not in agreement that the listing is appropriate, and the water quality has changed. Only the data since Outfall 001 began discharging should be considered for listing.

Please feel free to contact us should you require any additional information.

Sincerely,
GEI Consultants, Inc.

Natalie Love	Dan Guth
Laboratory Director	Reviewer

Appendix A

CMI PMP Total Aluminum data from 2018 – 2020 and map with all site locations.

Table A-1. Total aluminum, dissolved hardness, and the resulting hardness-based aluminum acute and chronic standards.

Site	Sample Date	Aluminum, Tot. (mg/L)	Hardness, Diss. (mg/L)	Acute Std (mg/L)	Chronic Std (mg/L)
RR-7	12/04/2018	1.3	178	7.56	3.03
RR-10	12/04/2018	0.18	394	10.07	4.03
RR-10A1	12/04/2018	0.2	423	10.07	4.03
RR-11A1	12/04/2018	0.17	390	10.07	4.03
RR-11C	12/04/2018	1.1	295	10.07	4.03
RR-12	12/04/2018	1.0	297	10.07	4.03
RR-13	12/04/2018	1.9	290	10.07	4.03
RR-14	12/04/2018	3.0	284	10.07	4.03
RR-16	12/04/2018	2.7	294	10.07	4.03
RR-7	08/20/2019	0.38	120	4.37	1.75
RR-10	08/20/2019	0.37	192	8.34	3.34
RR-10A1	08/20/2019	0.32	175	7.37	2.95
RR-11A1	08/20/2019	0.51	180	7.66	3.07
RR-11C	08/20/2019	0.59	187	8.05	3.22
RR-12	08/20/2019	0.57	187	8.05	3.22
RR-13	08/20/2019	0.73	191	8.29	3.32
RR-14	08/20/2019	0.82	193	8.44	3.38
RR-16	08/20/2019	0.94	191	8.29	3.32
RR-7	7/22/2020*	0.64	124	4.58	1.83
RR-10	7/22/2020*	0.53	235	10.07	4.03
RR-11A1	7/22/2020*	0.61	211	9.51	3.81
RR-11C	7/22/2020*	1.1	212	9.56	3.83
RR-12	7/22/2020*	0.73	212	9.56	3.83
RR-13	7/22/2020*	0.72	212	9.56	3.83
RR-14	7/22/2020*	1.0	212	9.56	3.83
RR-16	7/22/2020*	1.2	209	9.40	3.77

*Data from July 2020 have not been validated yet.

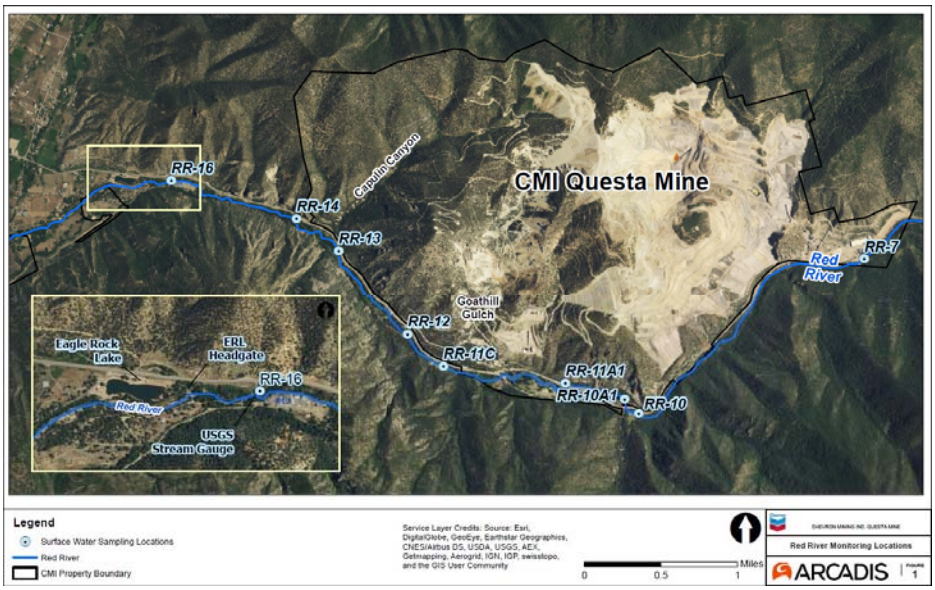

Figure A-1. Map of CMI Red River sampling locations along the mine site.

COMMENT SET 4 – San Juan Water Commission, Farmington, NM

Received: 9/10/20 via email

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Lynette Guevara
New Mexico Environment Department Surface Water Quality Bureau
P.0. Box 5469
Santa Fe, NM 87502

Re: Comments of San Juan Water Commission on the Surface Water Quality Bureau's Draft 2020-2022 State of New Mexico Clean Water Act §303(d)/§305(b) Integrated List of Assessed Surface Waters

Dear Ms. Guevara:

Thank you for publishing, and accepting public comment on, the Surface Water Quality Bureau's ("SWQB") *Draft 2020-2022 State of New Mexico Clean Water Act §303(d)/§305(b) Integrated List of Assessed Surface Waters* (the *"Draft Integrated List').* Through this letter, I hereby submit the San Juan Water Commission's ("SJWC") comments on the *Draft Integrated List.* SJWC appreciates the opportunity provided by SWQB to comment on the *Draft Integrated List.*

Request for Extension of Public Comment Period

The Preface to the *Draft Integrated List* notes (at i) that the San Juan River watershed was surveyed by SWQB in 2017-2018 and therefore is a "primary focus of revised or retained assessment conclusions in the Integrated List for this 2020-2022 cycle." According to the *Assessment Rationale for the 2020-2022 State of New Mexico §303(d)/§305(b) Integrated List ("Assessment Rationale")* (at 266-280), SWQB relied on its sampling during the 2017-2018 San Juan River watershed survey to assess impairment of the water bodies, or assessment units, in the watershed. Unfortunately, although SWQB's 2017-2018 San *Juan River Water Quality Survey Report* (the "San *Juan* Survey') is listed on the SWQB Water Quality Monitoring page of the New Mexico Environment Department ("NMED") website, the San *Juan Survey* is not available to the public, unlike 46 other water quality survey reports linked to that page. The lack of electronic public access to the San *Juan Survey* made it impossible for SJWC to determine whether the San *Juan Survey* and the resulting

impairment listings in the *Draft Integrated List* fully comply with the applicable provisions of the *Procedures for Assessing Water Quality Standards Attainment for the State of New Mexico CWA §303(d)/§305(b) Integrated Report: Comprehensive Assessment and Listing Methodology (CALM).* For this reason, SJWC requests that SWQB provide a link to the *San Juan Survey* on the NMED website, accept public comment on the *Draft Integrated List* for an additional 30 days after notification that the *San Juan Survey* is available, and delay presenting the *Draft Integrated List* to the New Mexico Water Quality Control Commission for review and approval until after the extended public comment period closes.

***SWQB RESPONSE**: The SWQB does not believe a request for extension of the 45-day public comment period is warranted as requested on the last day of the public comment period. The SWQB apologizes for the delay in posting the SJR Watershed Survey Summary Report -- it is now posted at https://www.env.nm.gov/surface-water-quality/water-quality-monitoring/. Published survey summary reports for surveys completed in 2011 forward do not contain specific water quality data, complete assessment datasets, or assessment conclusions by design. Survey reports are intended to summarize where and what data types were collected by our monitoring team as an update to the original Field Sampling Plan for a particular watershed survey, and to evaluate what data needs may still exist in that watershed. The SWQB changed to this format in 2014 to provide clarity that official assessment conclusions reside in the CWA 303(d)/305(b) Integrated List and not the survey reports. In addition, assessment conclusions often utilize water quality data from more than SWQB monitoring efforts. For example, non SWQB-collected data are often incorporated into final assessment datasets, as was the case for the San Juan River Watershed this listing cycle. SWQB-collected data are always available upon request, and are regularly requested by stakeholders and interested parties via direct email requests followed up by a public records request for tracking purposes (https://www.env.nm.gov/public-record-request/). The majority of SWQB watershed survey chemical/physical sampling results can also be downloaded directly from the Water Quality Portal: https://www.waterqualitydata.us/.*

General Comment

For the following assessment units in the San Juan River watershed, the *Assessment Rationale* states the unit was sampled during the "2017-2018 URG survey'':

- San Juan River (Animas River to Canon Largo)
- San Juan River (Canon Largo to Navajo Reservoir)
- San Juan River (NM reach upstream of Navajo Reservoir)
- San Juan River (Navajo bnd at Hogback to Animas River)

This language should be modified to indicate that these assessment units were sampled during the 2017-2018 San Juan River watershed survey.

***SWQB RESPONSE**: Thank you for catching this data entry error. The language in the Assessment Rationale has been revised to "…2017-2018 San Juan River watershed survey."*

Specific Comments

1. Gallegos Canyon (San Juan River to Navajo Nation Boundary)

E. coli has been added as a cause of impairment for this assessment unit. Until the San *Juan Survey* is available, SJWC is unable to determine whether the water sampling and analysis procedures were appropriate, and the resulting impairment determination is proper.

It is unclear whether temperature has been added as a cause of impairment for this assessment unit. Although temperature is not identified as a cause of impairment in the *Draft Integrated List,* the *Assessment Rationale* states {at 266) that "[t]hermograph data documented temperature impairment ... [and] [t]herefore, temperature ... [was] added ...." Assuming SWQB intends to include the temperature listing, SJWC cannot determine whether the thermograph data is valid and SWQB followed its assessment methodology for temperature {*CALM* Appendix B) until the *San Juan Survey* is available.

***SWQB RESPONSE**: As noted in the first section of this Response to Comments regarding minor edits upon further SWQB staff review, the newly identified temperature impairment for Gallegos Canyon was inadvertently not added to the assessment database used to generate the draft Integrated List and subsequent New Impairments review spreadsheet although it was noted in the associated Assessment Rationale. It has been added. See above Response regarding the San Juan survey summary report.*

2. Los Pinos River (Navajo Reservoir to Colorado Border)

Temperature has been added as a cause of impairment for this assessment unit. The *Assessment Rationale* states (at 266) that "[t]hermograph data documented temperature impairment." Until the *San Juan Survey* is available, SJWC is unable to determine whether the thermograph data is valid and SWQB followed its assessment methodology for temperature (*CALM* Appendix 8).

***SWQB RESPONSE**: See above Response regarding the San Juan survey summary report.*

3. Navajo River (Jicarilla Apache Nation to Colorado Border)

E. coli has been added as a cause of impairment for this assessment unit. Until the *San Juan Survey* is available, SJWC is unable to determine whether the water sampling and analysis procedures were appropriate, and the resulting impairment determination is proper.

Total phosphorus has been added as a cause of impairment for this assessment unit. Until the *San Juan Survey* is available, SJWC is unable to determine whether the water sampling and analysis procedures were appropriate, and the resulting impairment determination is proper

***SWQB RESPONSE**: See above Response regarding the San Juan survey summary report.*

Turbidity also has been added as a cause of impairment for this assessment unit. The *Assessment Rationale* states (at 267) that "(e]xceedences include ... 9/10 turbidity grab screening (need LTD to confirm)." Until the *San Juan Survey* is available, and SWQB clarifies its comment concerning "LTD" confirmation, SJWC is unable to determine whether the water sampling and analysis procedures were appropriate, and the resulting impairment determination is proper.

***SWQB RESPONSE**: The proposed turbidity listing is noted as IR category 5C. The Assessment Rationale has been expanded to state that a long-term data set from a continuous monitoring device is necessary to confirm the turbidity listing before proceeding to TMDL scheduling per SWQB listing methodologies. See above Response regarding the San Juan survey summary report.*

Finally, in 2012, SWQB noted that "[f]isheries data indicate coolwater would be a more appropriate ALU-WQS review needed." SWQB reaffirms this position in the *Draft Integrated List* (at 267): "Fisheries data indicate coolwater may be a more appropriate ALU-WQS review needed." For at least eight years, SWQB has questioned the appropriateness of the current coldwater aquatic life designated use. SWQB should conduct the suggested water quality standard review in advance of the next Triennial Review to settle this issue.

***SWQB RESPONSE**: Your suggestion is noted. A draft use attainability analysis (UAA) is in development; however, due to limited staff resources, this draft UAA will not be included in the 2020 Triennial Review because various and often complex statutory mandates take priority for triennial reviews. That said, this draft UAA is prioritized for completion following the 2020 Triennial Review since UAAs can be, and often are, independent rulemakings. The temperature impairment listing is the only impairment determination that would potentially be impacted by a revision to coolwater aquatic life use. Accordingly, this listing is noted as IR Category 5B, meaning a water quality standards review is suggested prior to scheduling TMDL development.*

4. San Juan River (New Mexico Reach Upstream of Navajo Reservoir)

E. coli has been added as a cause of impairment for this assessment unit. Until the *San Juan Survey* is available, SJWC is unable to determine whether the water sampling and analysis procedures were appropriate, and the resulting impairment determination

is proper.

***SWQB RESPONSE**: See above Response regarding the San Juan survey summary report.*

Chronic Aluminum Total Recoverable also has been added as a cause of impairment for this assessment unit. Until the *San Juan Survey* is available, SJWC is unable to determine whether the water sampling and analysis procedures were appropriate, and the resulting impairment determination is proper. The *Assessment Rationale* states (at 270) only that "[e]xceedences include 2/5 *E. coli* and chronic ALU TR aluminum." This statement does not provide enough information to determine whether SWQB followed the *CALM* requirements (at 21-26 of 43) for assessing support of the warm-water aquatic life designated use, including hardness analysis and filtering (depending on turbidity measurement).

***SWQB RESPONSE**: See above Response regarding the San Juan survey summary report. The Assessment Rationale (formerly referred to as the "ROD") for the Integrated List is a non-required text document intended to provide EPA and stakeholders with additional information regarding impairment listings. The assessment was re-checked. The current listing methodology (NMED/SWQB 2019) was followed, including requirements for concurrent hardness and filtering depending on concurrent turbidity measurements. The SWQB is not required to provide all data and assessment spreadsheets as part of the public notice and has not done so in the past; there are a substantial number of individual files associated with each assessed watershed or region making this impractical. However, the SWQB fulfills all requests by stakeholders and the public to review and inspect public records and data, as a general practice and as required by the Inspection of Public Records Act.*

SJWC notes that this assessment unit is only 0.56 miles long and terminates at the Colorado border. It therefore is likely that the *E. coli* and aluminum impairments (if proper) are caused by source contributions upstream of the border with Colorado. SJWC requests that SWQB work with its counterpart in Colorado to ensure that point sources in Colorado (if any) do not contribute to *E. coli* or aluminum impairments at the border. In addition, the planned 2021 TMDL process should take Colorado pollutant loading into account.

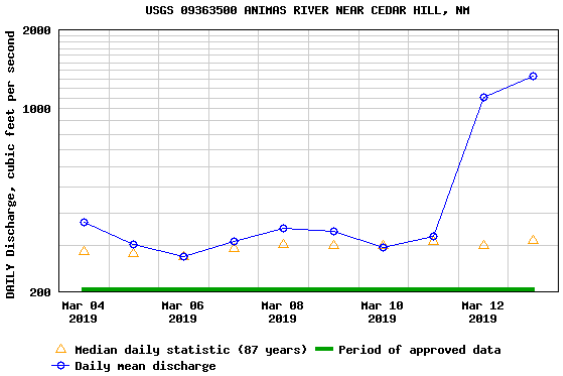
***SWQB RESPONSE**: Communication with TMDL counterparts in Colorado and consideration of upstream contributions are always taken into consideration during TMDL development.*

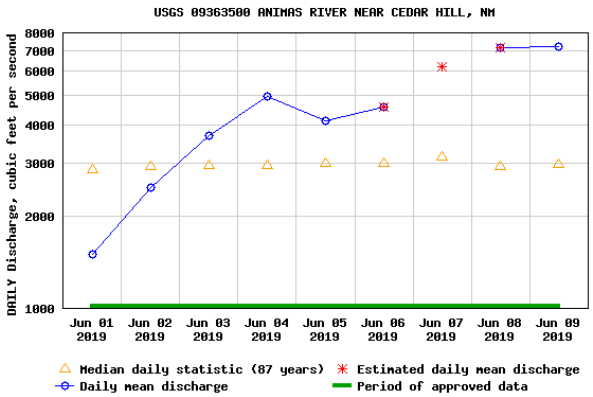
5. Animas River (Estes Arroyo to Southern Ute Indian Tribe Boundary)

Lead was added as a cause of impairment for this assessment unit. Until the *San Juan Survey* is available, SJWC is unable to determine whether the water sampling and analysis procedures were appropriate, and the resulting impairment determination is proper. The *Assessment Rationale* states (at 272) that "[t]here were 2/24 dissolved lead chronic ALU at the station abv Estes Arroyo (both exceedances were in EPA's 2019 spring runoff dataset)."

As noted in Table 3.4 of the *CALM* (at 22 of 43), samples taken to assess chronic aquatic life criteria for metals "should be taken during hydrologically stable conditions to be representative of the averaging period . . .. " The *Assessment Rationale* provides no indication that the EPA "spring runoff' samples were taken during "stable conditions."

***SWQB RESPONSE**: The assessment was re-checked. The flow was above the median during both the 3/9/2019 and 6/5/2019 sampling events (see below). The procedure for determining stable flow conditions is provided in NM's listing methodology (section 3.1.2.2): "When exceedences occur at or near a continuous flow gaging station and mean daily flow data are available, a stream may be considered hydrologically stable if the [coefficient of variation] CV of the mean daily flow for a 4-day period surrounding the sampling collection is at or below 0.2. The CV is determined by dividing the standard deviation of the values by the mean of the values" and "The 4-day window that produces the lowest CV should be determined instead of always using a predetermined number of days before or after the sampling event." The lowest CV for daily discharge (i.e., flow) for the 4-day window surrounding the March sampling event (3/8-3/11/2019) was 0.06. The lowest CV for daily discharge (i.e., flow) for the 4-day window surrounding the June sampling event (6/3-6/6/2019) was 0.11. Therefore, both sample results were collected during stable conditions as defined in the listing methodology. The proposed dissolved lead listing is retained.*





"Nutrients" also were added as a cause of impairment for this assessment unit. Until the *San Juan Survey* is available, SJWC is unable to determine whether the water sampling and analysis procedures were appropriate, and the resulting impairment determination is proper. The *Assessment Rationale* states (at 272) simply that "[t]otal nitrogen and delta DO thresholds were exceeded." This statement provides no information whatsoever to confirm that SWQB's review complied with the *Nutrient Listing Methodology for Perennial Streams and Rivers,* which is Appendix C to the *CALM.*

***SWQB RESPONSE**: See above Response regarding the San Juan survey summary report. The Assessment Rationale (formerly referred to as the "ROD") for the Integrated List is a non-required text document intended to provide EPA and stakeholders with additional information regarding impairment listings. The assessment was re-checked. The current listing*

methodology (NMED/SWQB 2019) was followed. The median total nitrogen levels were 0.32 mg/L and 0.37 mg/L at stations 0.5 miles downstream of the state line and upstream of Estes Arroyo, respectively (exceedence threshold is 0.30 mg/L). The measured delta DO was 7.51 mg/L (exceedence threshold is 1.79). The proposed nutrient listing is retained.

6. Shumway Arroyo (San Juan River to Ute Mountain Ute Boundary)

E. coli has been added as a cause of impairment for this assessment unit. Until the San *Juan Survey* is available, SJWC is unable to determine whether the water sampling and analysis procedures were appropriate, and the resulting impairment determination is proper.

***SWQB RESPONSE**: See above Response regarding the San Juan survey summary report.*

7. Stevens Arroyo (Perennial Parts San Juan River to Headwaters)

E. coli has been added as a cause of impairment for this assessment unit. Until the *San Juan Survey* is available, SJWC is unable to determine whether the water sampling and analysis procedures were appropriate, and the resulting impairment determination is proper.

***SWQB RESPONSE**: See above Response regarding the San Juan survey summary report.*

Thank you for your consideration of these comments. If you have any questions, or if you would like to discuss these issues in more detail, please do not hesitate to call me. We look forward to receiving your response to these comments-particularly our requests for public access to the *San Juan Survey* and an extension of the public comment period.

Sincerely,

Aaron Chavez
Executive Director
San Juan Water Commission

COMMENT SET 5 – Middle Rio Grande Technical Advisory Group (TAG)

September 10, 2020

Lynette Guevara
CWA 303(d)/305(b) Assessment Coordinator NM Environment Department
Surface Water Quality Bureau 1190 St. Francis Drive, N2102 Santa Fe, NM 87505

Re: Comments for 2020-2022 New Mexico Environment Department (NMED) Surface Water Quality Bureau (SWQB) draft 303(d)/ 303(b) Integrated Report

Ms. Guevara,

This correspondence serves as written documentation that the members copied below of the Middle Rio Grande Technical Advisory Group (TAG), consisting of Municipal Separate Storm Sewer System (MS4) permittees covered under the EPA Region 6 Middle Rio Grande NPDES Watershed Based Permit No. NMR04A000, have submitted comments concerning the 2020-2022 NMED SWQB draft 303(d)/ 303(b) Integrated Report (Integrated Report) released for 45-day public comment on July 27, 2020. Members of the TAG include: the City of Albuquerque, Albuquerque Metropolitan Arroyo Flood Control Authority, New Mexico Department of Transportation, University of New Mexico, Bernalillo County, Southern Sandoval Arroyo Flood Control Authority, City of Rio Rancho, Sandoval County, Village of Los Ranchos, Village of Corrales, Town of Bernalillo, Kirtland Air Force Base, Sandia National Laboratories, and Eastern Sandoval Arroyo Flood Control Authority. All members were provided these comments for review.

All relevant and available water quality data should be used to determine impairment status for the 2020- 2022 Integrated Report. A mass-email was sent by the SWQB on June 26, 2019 requesting chemical, physical, biological, and bacteriological data for all surface waters of the state of New Mexico for comparison to water quality standards published in 20.6.4 NMAC. A request for data embedded in an email newsletter is not, by itself, an adequate method of seeking relevant and available data. During preparation of the 303 (d) list, NMED should make every effort to solicit water quality data from local, state, federal, public, and private entities for consideration.

The 2020-2022 Integrated Report lists a new impairment for Mercury- fish consumption for assessment units (AUs) Rio Grande (Isleta Pueblo boundary to Tijeras Arroyo), Rio Grande (Tijeras Arroyo to Alameda Bridge), and Rio Grande (non-pueblo Alameda Bridge to HWY 550 Bridge). The NMED 2020 Fish Consumption Advisory Table for Rio Grande (I-25 to US 550) lists Channel Catfish as “no advisory” but has PCBs and Mercury in the contaminants column. The table also lists two (2) detections for white bass with PCBs and Mercury in the contaminants column. The Integrated Report references the New Mexico Game and Fish (NMGF) consumption advisories http://www.wildlife.state.nm.us/download/fishing/advisories/Fishing-Catch-Release-Eat-2020_21- NMDGF.pdf). When reviewing the NMGF advisory, only PCBs are

listed as the contaminant of concern for this same section of the Rio Grande. Additional information about the source of the mercury impairment data could not be found on the New Mexico Department of Health website (https://nmtracking.org/environment/Biomonitoring.html) or the EPA Fish Tissue Data Collected by States (NLFA) website https://fishadvisoryonline.epa.gov/FishTissue.aspx). The most recent data that could be found for mercury in fish tissue in this section of the Rio Grande on the NLFA website (https://fishadvisoryonline.epa.gov/FishTissueDetails.aspx?STATION_ID=NM-3) is from 2008. Please clarify the source of data for the mercury impairment.

***SWQB RESPONSE**: Thank you for pointing out this inconsistency between the NMED and NM Department of Game and Fish web information regarding fish consumption. The current listing methodology, Section 3.1.4 Fish consumption advisories, states "…current fish consumption advisory, as well as additional information on how New Mexico develops these advisories, can be found at: https://www.env.nm.gov/surface-water-quality/fish-consumption-advisories/" (NMED/SWQB 2019). The most recent advisory table on this website, in this case the 2020 New Mexico Fish Consumption advisory table, is used to determine impairments and states there are fish consumption advisories for the Rio Grande (I-25 to US 550) for White Bass for both PCBs and Mercury. The SWQB updated the advisory in March 2020 after the NM Department of Game and Fish 2020 proclamation had been issued. The SWQB's fish consumption advisory coordinator will ensure that future updates to the New Mexico Fish Consumption advisory table are incorporated into the NM Department of Game and Fish proclamation in advance of annual publication. The Fish Consumption Advisory mercury impairment is based on 2008 sampling results. The 2008 sampling resulted in advisory limits for both PCBs and mercury. However, since the PCB results resulted in a more stringent advisory, PCBs were listed as the cause of the advisory and impairment. The SWQB updated the 2020 Fish Consumption Advisory to list all parameters in the advisory that result in an advisory limit of 4 meals per month or less. This change was made for transparency and to provide information to the public on all causes of advisory limits, not just the most stringent. When "No Advisory" is listed for a species, the CONTAMINANT column in the fish consumption advisory table represents monitored parameters.*

An impairment for *E. coli* has been relisted for the Rio Grande (Isleta Pueblo boundary to Tijeras Arroyo), Rio Grande (Tijeras Arroyo to Alameda Bridge), Rio Grande (non-pueblo Alameda Bridge to HWY 550 Bridge) and Rio Grande (non-pueblo HWY 550 Bridge to Angostura Div) AUs. The reason stated in the assessment rationale document ((https://www.env.nm.gov/surface-water-quality/wp- content/uploads/sites/25/2018/03/DRAFT-2020-IR-CWA-303d_305b-Assessment-Rationale.pdf)) for the impairment is, *"E. coil data were collected from July 2017 through May 2018 as part of a Cuidad Soil and Water Conservation Service project to characterize bacterial impairment and regrowth in the Middle Rio Grande…. exceedances of the applicable single sample E. coli criterion were documented… Therefore, E. coli was relisted as a cause of impairment."* Is a single exceedance an appropriate criterion? Would the single exceedance apply for 2 data points as well as 50 data points? Clarify the criteria for listing an impairment.

***SWQB RESPONSE**: The assessments were re-checked. The original listings, relisting, and continued listing for E. coli in the Middle Rio Grande were not based on single exceedence of the applicable single sample criterion. The listing methodology with respect to E. coli is detailed in the listing methodology at Section 3.3 (NMED/SWQB 2019):*

Table 3.9 Interpreting bacteriological data to assess Contact Use Support

TYPE OF DATA*	FULLY SUPPORTING	NOT SUPPORTING	NOTES
•**Bacteria** **A)** 4 to 10 samples **B**) > 10 samples	**A**) No more than one exceedence of the single sample criterion. **B**) Single sample criterion is exceeded in <10% of samples or geometric mean criterion is met.	**A**) More than one exceedence of the single sample criterion. **B**) Single sample criterion exceeded in ≥ 10% of measurements or geometric mean criterion is not met.	The monthly geometric mean shall be used in assessing attainment of criteria when a minimum of five samples is collected in a 30-day period (20.6.4.14.B NMAC).

NOTES: * Less than 4 samples = not assessed. See Section 2.1.4 for details. Also, SWQB bacteria results that are marked "Ea" due to incubation temperatures between 35.5 and 38 degrees Celsius will not be used to make assessment conclusions.

Three Middle Rio Grande AUs were re-listed based on the submitted and accepted Cuidad SWCD dataset based on the exceedence ratios detailed in the associated Assessment Rationale:

- *Rio Grande (Tijeras Arroyo to Alameda Bridge)*
- *Rio Grande (non-pueblo Alameda Bridge to HWY 550 Bridge)*
- *Rio Grande (non-pueblo HWY 550 Bridge to Angostura Div)*

AU Rio Grande (Isleta Pueblo boundary to Tijeras Arroyo) was not relisted; rather the Cuidad SWCD data confirmed the listing. The Middle Rio Grande Technical Advisory Group (MRG TAG) data submitted as part of this comment set further confirms this listing (see https://www.env.nm.gov/surface-water-quality/wp-content/uploads/sites/25/2018/03/2020-IR-Outside-Data-QA-Determinations.pdf for data and associated determination).

Urbanized areas, such as the Albuquerque Metro area, generally have increased pollutant loads in surface waters and frequently have multiple entities/groups that collect additional water quality data to assess the impacts of the increased pollutant loads. NMED has not included all the E.Coli data available for the Middle Rio Grande. As this is the most developed and heavily populated urbanized area in New Mexico, potentially having a disproportionate impact to water quality in the Rio Grande, NMED should make a concerted effort to seek out additional data sets from both internal and external sources.

Substantial *E. coli* data (as well as other constituents such as PCBs) has been collected by many

of the permittees under the NPDES Watershed Based Permit No. NMR04A000. This data includes Compliance Monitoring Cooperative (CMC) permit-related in-stream sampling data, AMAFCA stormwater sampling data, and City of Albuquerque Microbial Source Tracking (MST) studies.

The above-referenced data was collected under project-specific Quality Assurance Protection Plans (QAPPs). This data should be reviewed and included in the evaluation of impairments for the 2020-2022 Integrated Report. These data sets will be submitted to NMED for evaluation and inclusion in this report.

***SWQB RESPONSE**: The SWQB makes a concerted effort within allowable staff resources every listing cycle, as well as between listing cycles, to seek out additional data sets, and regularly works with stakeholders regarding data quality needs and the data submittal processes. Outside sources of data that meet required data quality levels are regularly incorporated into assessments.*

Three MRG TAG members and SWQB staff communicated via an August 7th Zoom call and related email exchanges regarding surface water data, supporting quality assurance documentation, and the data submittal and review process for the Integrated Report (IR). The SWQB suggested to Mr. Chavez that he submit instream surface water data to the SWQB in the Data Template format (i.e., Microsoft Excel) located on the SWQB data submittal webpage (https://www.env.nm.gov/surface-water-quality/data-submittals/) along with supporting documentation needed for a Data Quality Level (DQL) determination for consideration in development of the IR. The formatted data in the Data Template would provide the metadata (e.g., sample location, method of analysis, and method detection limits) needed for DQL review and ensure summitted data was accessible in a centralized location. Surface water quality data were not submitted in the requested format. Instead, as part of this comment set, a webpage link to a file repository was provided that included Compliance Monitoring Cooperative (CMC) data in a file titled CMC Water Quality Monitoring Results Database 06_26_2019.xlsx, several Hall Environmental Analysis Laboratory (HEAL) reports in PDF format, and other supporting documentation (e.g., QAPPs and FSPs) in PDF format. The CMC Water Quality Monitoring Results Database (CMC DMR) file contained surface water results but did not include all necessary supporting metadata (e.g., method of analysis or method detection limits) contained in the recommended Data Template to make a DQL determination.

Through the thorough and extensive investigation of laboratory reports by the SWQB Quality Assurance Officer (QAO), the method of analysis, detection limit, and other supporting information necessary to make a DQL determination for E. coli results were identified. E. coli results contained in the CMC DMR file, as well as in submitted PDF laboratory reports, were then reformatted and collated by the Assessment Coordinator and QAO into the assessment Data Template for review and consideration in the development of the IR. The collated file is titled MGR TAG Submitted E Coli data assessment.xlsx, and is Appendix A in the associated Data Determination Letter (available at: https://www.env.nm.gov/surface-water-quality/wp-content/uploads/sites/25/2018/03/2020-IR-Outside-Data-QA-Determinations.pdf).

The QAO reviewed the data in the MRG TAG Submitted E. Coli data assessment.xlsx file, its supporting documentation, and related email correspondence with MRG TAG personnel, and made a DQL determination. The 2019 Water Quality Data Submittal Guidance was used in combination with all relevant SWQB Quality Assurance requirements, namely the 2018 SWQB Quality Assurance Project Plan for Water Quality Management Programs (SWQB QAPP) and associated SWQB Standard Operating Procedures (SOPs) to assess the quality of the data and to determine its suitability for inclusion into the development of the IR.

Specifically, the submitted documentation associated with the dataset was reviewed to determine: (1) if there was documentation of QA/QC procedures that, at a minimum, meet the QA/QC requirements described in the SWQB's most recent QAPP; and (2) if there was reasonable evidence or assurance that these procedures were followed. The full Data Determination Letter was emailed to you on 9/28/2020, and is available at https://www.env.nm.gov/surface-water-quality/wp-content/uploads/sites/25/2018/03/2020-IR-Outside-Data-QA-Determinations.pdf

The focus of this data determination is limited to the submitted E. coli data due to the timing of this data submittal and the extensive amount of time required to review the data in the submitted format. Although some of these submitted data also reside in NetDMR, the needed metadata and supporting information necessary to perform a DQL determination with respect to assessment are not available in NetDMR so the SWQB could not have utilized a NetDMR or ECHO download as a complete source of the assessment data and supporting information necessary to make a DQL determination with respect to the assessment process.

The instream surface water samples collected by the CMC and the corresponding results are valuable to the State of New Mexico for restoring and maintaining the chemical, physical and biological integrity of surface water(s) of the State. The SWQB plans to continue conversations with the MRG TAG regarding the value of the dataset and potential use in upcoming IRs through continued discussion, as well as through invitation to a Data Sharing Network workshop, hosted by the SWQB in early 2021. Additionally, the SWQB recommends that the CMC expand the CMC DMR file to collate all available instream water quality data and incorporate the recommended Data Template format for future IR submittals. The SWQB has also made a request to the EPA Office of Water to explore expanding the NetDMR database in order to house the additional metadata necessary to make data determinations with respect to IR development. EPA responded to this request – this email was forwarded to you on 9/28/20.

If you have any questions, please contact:

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The MRG TAG thanks you for your time and consideration of these comments.

Sincerely,

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COMMENT SET 6 – Buckman Direct Diversion Board

September 10, 2020

Dear Ms. Guevara:

The Buckman Direct Diversion Board (the Board) is the governing body for the Buckman Direct Diversion, a single diversion point on the Rio Grande that the City of Santa Fe, Santa Fe County, and their limited partner, Las Campanas, share to divert their San Juan-Chama and native Rio Grande water rights. Diverted water is treated and introduced into the regional water system. The government entities are represented on the Board.

The Buckman Direct Diversion is on the Rio Grande, approximately 3 miles downstream of Otowi Bridge. The draft 2020-2022 State of New Mexico Clean Water Act (CWA) §303(d)/305(b) Integrated List of Assessed Surface Waters (Integrated List) includes assessment of the segment of the Rio Grande within which the BDD intake structure is located, and stream segments draining the Pajarito Plateau where Los Alamos National Laboratory (LANL) is located. Many of these waters flow to Los Alamos Canyon, and enter the Rio Grande at their confluence approximately three miles upstream of the BDD intake structure. The Board is therefore understandably concerned about water quality in the Rio Grande and in Los Alamos Canyon and its tributaries. The Board provides the following comments.

Segment 114 Rio Grande (Cochiti Reservoir to San Ildefonso boundary)

In the "AU_COMMENT" field of the List of Impaired Waters (List), NMED notes that "[t]he city of Santa Fe has procedures in place that do not allow public water supply withdrawal from the Buckman Diversion during significant storm events." The Board notes that the City of Santa Fe, Santa Fe County, and their limited partner, Las Campanas, share the Buckman Direct Diversion to divert their share of San Juan Chama and native Rio Grande water rights. The BDD Board was created by the City of Santa Fe and Santa Fe County via a "Joint Powers Agreement" (JPA) in 2005 to oversee implementation, construction, and operation of the BDD. The City, County, and their limited partner, Las Campanas, developed a "Facility Operating and Procedure Agreement" (FOPA) that governs how the BDD is operated. This agreement is overseen by the BDD Board. Any procedures to allow or not allow withdrawal from the Rio Grande are under the purview of and approved by the Board.

***SWQB RESPONSE**: Thank you for the clarification. The AU Comment has been revised to read as follows "Procedures are in place, under the purview of the Buckman Direct Diversion Board, that are intended to not allow public water supply withdrawal from the Buckman Diversion*

during significant storm events."

Segment 128 Waters

Many stream segments on the Pajarito Plateau outside of lands managed by the U.S. Department of Energy (USDOE) within LANL are listed as impaired, with NMED noting in the "AU_COMMENT" field that application of the Hydrology Protocol resulted in a classification of the segment as ephemeral, intermittent, or perennial. However, for Segment 128 waters, the Board is concerned that the parties to the Joint Stipulation Regarding Proposed Changes to 20.6.4.128 NMAC (i.e., NMED, LANL, the USDOE, and Amigos Bravos) have not fully implemented the Stipulation by applying the Hydrology Protocol to all waters on the Plateau. This could result in perennial waters receiving the lesser protections of ephemeral streams, and therefore not being assessed as impaired when in fact they are. The Board also notes that for Segment 128 waters listed as impaired none are as yet subject to TMDLs, a necessary first step to improving water quality, despite being listed as impaired for, in some cases, over ten years. We ask that NMED update the Board on the progress the parties to the Stipulation have made, and how implementation of the Stipulation has affected the List of Impaired Waters, and how full implementation could affect specific segments.

***SWQB RESPONSE**: The SWQB appreciates your concern and NMED counsel will contact the Board's counsel to schedule a meeting to provide the requested updates.*

General Procedural Comments

The Board recognizes that the Integrated Report is not the vehicle by which to comment on changes to State Water Quality Standards (State Standards). The Board is nevertheless concerned that NMED is developing the Integrated List at the same time it is engaging in its Triennial Review of State Standards. Through its Stakeholder Discussions in July 2020, NMED has informed the Board that it is currently preparing amendments to State Standards, and that draft amendments will be put out for public comment in November of this year. As the List of Impaired Waters contained in the Integrated Report is intended to inform changes to State Standards, NMED does not have the benefit of transparently using the most current assessments in its amendments to be proposed to the Water Quality Control Commission (Commission). We ask NMED to consider allowing the Integrated Report process to proceed to its completion before NMED proposes amendments to State Standards to the Commission.

***SWQB RESPONSE**: The Clean Water Act requires that states conduct a comprehensive review of water quality standards at least once every three years through the triennial review process. In addition, the Clean Water Act requires states to update and resubmit their impaired waters list every two years. This just happens to be a year in which these two mandates coincide. Assessments do not form the basis of proposed amendments to 20.6.4 NMAC. Rather, field*

observations and best professional judgement from monitoring and assessment staff regarding the potential need for a water quality standards review are noted in the Integrated List and passed on to the SWQB Standards, Planning, and Reporting Team on a regular basis. Many standards changes resulting from this inter-bureau communication are approved outside of the triennial review process in independent rulemakings. For example, the SWQB proposed four amendments to the water quality standards (20.6.4 NMAC) since the last triennial review. In addition, the SWQB reassesses waterbodies of concern when applicable water quality standards are amended and approved by EPA.

The Buckman Direct Diversion plays a unique role by deriving drinking water from the Rio Grande downstream of LANL and delivering it safely and effectively to its regional customers. We appreciate that NMED recognizes this fact and has worked over the years to provide special provisions and assessments for stream segments from the Pajarito Plateau and the Rio Grande at the BDD intake in State Standards.

***SWQB RESPONSE**: Thank you for your comment.*

We appreciate the opportunity to provide these comments and look forward to your response.

Sincerely,

Kyle Harwood
Buckman Direct Diversion Board Counsel

SWQB REFERENCES

New Mexico Environment Department/Surface Water Quality Bureau (NMED/SWQB). 2019. Procedures for Assessing Standards Attainment for the State of New Mexico CWA §303(d)/ §305(b) Integrated Report: Comprehensive Assessment and Listing Methodology (CALM). Santa Fe, NM. Available at: https://www.env.nm.gov/surface-water-quality/calm/.