



# New Mexico Environment Department

Triennial Review of Standards for Interstate and Intrastate Surface Waters

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# Triennial Review of Water Quality Standards

## General Outline of Today's Discussion

The Bureau would like to thank you for expressing interest in the Triennial Review of *Standards for Interstate and Intrastate Surface Waters* (20.6.4 NMAC).

- I. **Regulatory Framework for Triennial Reviews**
- II. **Amendments under consideration for this Triennial**
- III. **The Triennial Review Process and Tentative Timelines**
- IV. **Listening Session with Members of the Public**

A scenic landscape featuring a river in the foreground, a large tree on the left, and mountains in the background under a clear blue sky. The text "I. Regulatory Framework" is overlaid on a blue banner across the middle of the image.

# I. Regulatory Framework



# Triennial Review Requirements



Cochiti Lake, 2017

- Federal CWA § 303(c)(1)
- 40 CFR § 131.20
  - ▣ Requires the State hold a public hearing for the purpose of reviewing applicable water quality standards at least once every three years
  - ▣ As appropriate, modify and adopt standards through the rulemaking process which requires a hearing
    - re-examine any waterbody segment with water quality standards
    - if any new information has become available
- 20.6.4.10(A) NMAC requires the state hold public hearings at least once every three years to review and propose necessary revisions to the water quality standards



# State of New Mexico Water Quality Standards

## Federal Water Pollution Control Act (Clean Water Act or “CWA”)

Per Section 303 of the CWA, each agency is required to adopt Water Quality Standards

Per Section 101(a) of the CWA, the objective of the Act is to restore and maintain the chemical, physical and biological integrity of the Nation’s waters

## 40 Code of Federal Regulations (“CFR”)

Per 40 CFR 131.20, from time to time, but at least once every 3 years, **hold public hearings for the purpose of reviewing applicable water quality standards** adopted pursuant to Sections 131.10 through 131.15 and Federally promulgated water quality standards and, as appropriate, modifying and adopting standards. The State shall also **re-examine any waterbody segment with water quality standards that does not include the uses specified in section 101(a)(2) of the Act every 3 years** to determine if any new information has become available. If such new information indicates that the uses specified in section 101(a)(2) of the Act are attainable, the State shall revise its standards accordingly.

## The State of New Mexico’s Water Quality Act (“WQA”) NMSA 1978, §§ 74-6-1 to -17

Is the mechanism via which the New Mexico Legislature has provided authority to adopt Water Quality Standards in accordance with the CWA

## Water Quality Control Commission (“WQCC”)

The WQCC, having no administrative staff of its own, has delegated the responsibilities for water quality management and CWA activities involving surface waters to the New Mexico Environment Department (“NMED”)

## 20.6.4 New Mexico Administrative Code (“NMAC”)

The WQCC has codified its water quality standards for interstate and intrastate surface waters



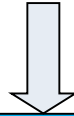
# Water Quality Standards

Antidegradation Policy

Designated Uses



Criteria



**Numeric**

Apply to particular designated uses



**Narrative**

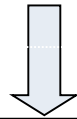
Apply to all waters



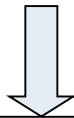
# Water Quality Standards

## Antidegradation Policy

Designated Uses

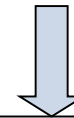


Criteria



Numeric

Apply to particular designated uses



Narrative

Apply to all waters



# Water Quality Standards

Antidegradation Policy

Designated Uses

Criteria

Numeric

Apply to particular designated uses

Narrative

Apply to all waters





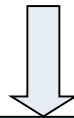
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Antidegradation Policy

Designated Uses



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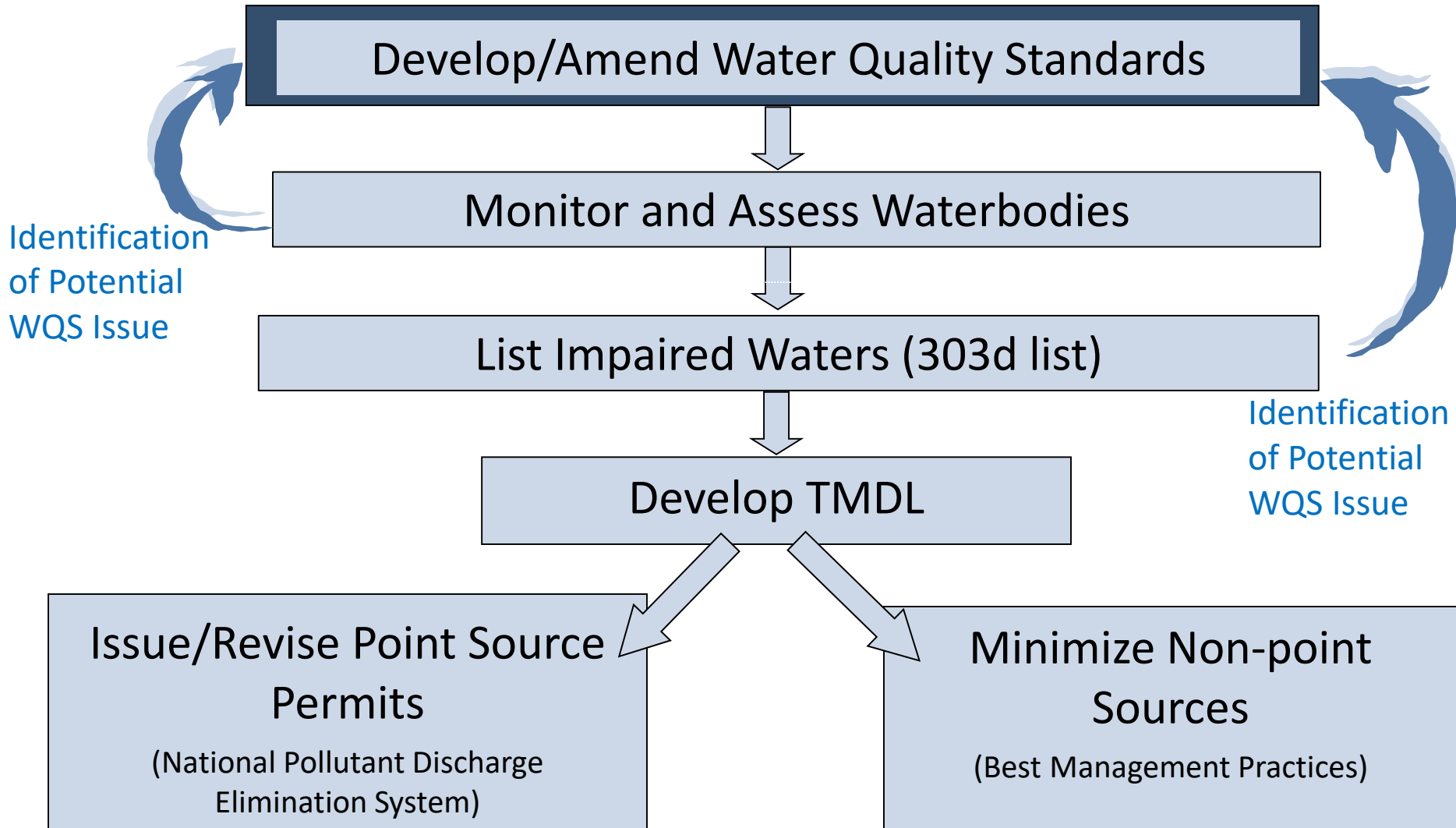


**Narrative**

Apply to all waters



# Clean Water Act Framework





## II. Proposed Amendments



# Review Process

- ❑ Evaluation of needs
- ❑ Ranking of proposed amendments
  - ▣ **Tier I**- Required to be reviewed for Triennial
  - ▣ **Tier II**-Can only be updated during a Triennial and implications for implementing WQS if change not made at this time
  - ▣ **Tier III**-Can only be updated during a Triennial but no direct implications for implementing WQS if change not made at this time
  - ▣ **Tier IV**-Can be made outside the Triennial
- ❑ Prioritization
- ❑ Verification of information in sections
- ❑ Evaluation of history and supporting evidence for amendment
- ❑ Final identification of actions for this Triennial



# Changes Being Proposed



Rio Grande at John  
Dunn's Bridge, 2011

- Objective
- Definitions
- Amendments associated with providing greater consistency and clarity
- Amendments to clarify regulatory processes
- Designated Uses as a result of Existing Uses
- Numeric Criteria



# 20.6.4.6 NMAC Objective

## Effects of Climate Change on Water Quality



Erosion



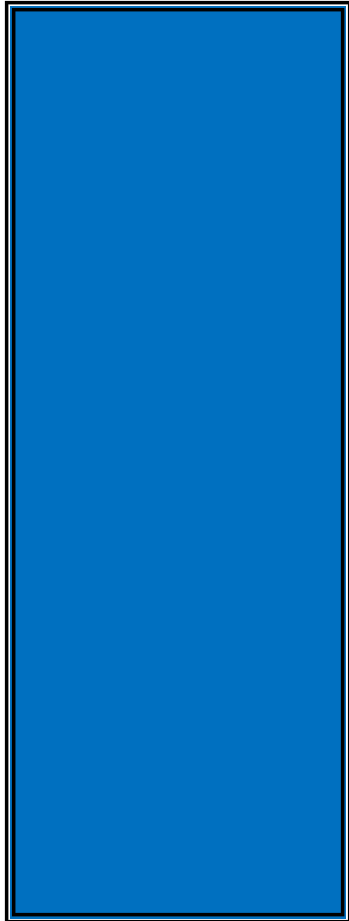
← Extreme Events

← Habitat Loss and Loss of Property

Definition Name	Type of Change	Reasoning
4Q3	New	Defines the critical low flow needed to develop point source discharge requirements
Attainable Use	Amendment	Provides consistency with federal terminology and clarifies that the attainable use may or may not be as stringent as the designated use
Baseflow	New	Provides clarification to term as referenced
Climate Change	New	Provides definition as term is used specifically in 20.6.4 NMAC
Contaminants of Emerging Concern	New	Codifies use of term used both currently as well as historically
Effluent Dominated	New	Clarify the application of water quality standards as they pertain to certain permitted discharges
Hardness	New	Codifies use of term used both currently as well as historically
Harmonic Mean Flow	New	Moving from 20.6.4.11(B)(1) for consistency purposes
Limited Aquatic Life	Amendment	Clarifying that this designated use is not limited to just ephemeral or intermittent waters
Marginal Coldwater	Amendment	Clarifying that this designated use is not limited to just ephemeral or intermittent waters and includes conditions distinguishing it from the designated coldwater aquatic life use
Persistent Toxic Pollutants	New	Clarifying the meaning as referenced in 20.6.4.900(J) NMAC
Surface Waters of the State	Amendment	Reformatting for readability and referencing
Unclassified Waters of the State	New	Moving from 20.6.4.11(H) for consistency purposes



# General Amendments for Clarity and Consistency Purposes



- ❑ Antidegradation Policy (20.6.4.8 NMAC)
- ❑ Outstanding National Resource Waters (20.6.4.9 NMAC)
- ❑ Applicability of Water Quality Standards (20.6.4.11 NMAC)
- ❑ Compliance with Water Quality Standards (20.6.4.12 NMAC)
- ❑ General Criteria (20.6.4.13 NMAC)
- ❑ Classified waters (Sections 108, 115, 206, 208, 209, 215, 220, 307 and 309, 311 and 312, 405, and 408)
- ❑ Criteria Applicable to Existing, Designated or Attainable Uses (20.6.4.900 NMAC)
- ❑ Publication References (20.6.4.901 NMAC)





# Review of Standards (20.6.4.10 NMAC)

## 20.6.4.10 REVIEW OF STANDARDS; NEED FOR ADDITIONAL STUDIES:

A. Section 303(c)(1) of the federal Clean Water Act requires that the state hold public hearings at least once every three years for the purpose of reviewing water quality standards and proposing, as appropriate, necessary revisions to water quality standards.

**B. In accordance with 40 CFR 131.10(i), when an existing use, as defined in 20.6.4.7 NMAC, is more stringent than the designated use and supporting evidence demonstrates the presence of that use, the designated use shall be amended to be no less stringent than the existing use.**

~~[B.]~~ C. It is recognized that, in some cases, numeric criteria ~~[have been adopted that reflect use designations rather than existing conditions of surface waters of the state.]~~ **for a particular designated use may not adequately reflect the local conditions and the adaptive nature of particular organisms to utilize a water without harm. In these cases, a water quality criterion may be modified to reflect the natural condition of a specific waterbody.** ~~[Narrative criteria are required for many constituents because accurate data on background levels are lacking. More intensive water quality monitoring may identify surface waters of the state where existing quality is considerably better than the established criteria.]~~ When justified by sufficient data and information, **a numeric** ~~[the]~~ water quality ~~[criteria]~~ **criterion** ~~[will]~~ **may** be **adopted or** modified to **a less stringent criterion and still protect the attainable uses of the waterbody.** **The modification of the criterion does not necessarily change the designated use. The removal or amendment of a designated use to a less stringent use can only be done through a use attainability analysis in accordance with 20.6.4.15 NMAC.**

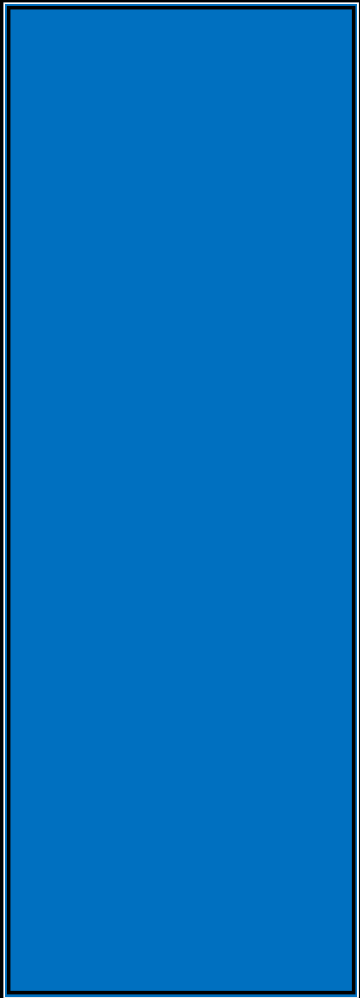


# Use Attainability Analysis (20.6.4.15 NMAC)

- Applicability of the Hydrology Protocol
- Determining highest attainable use
- Process for removal and replacement of a designated use
- Process for Use Attainability Analysis by another entity



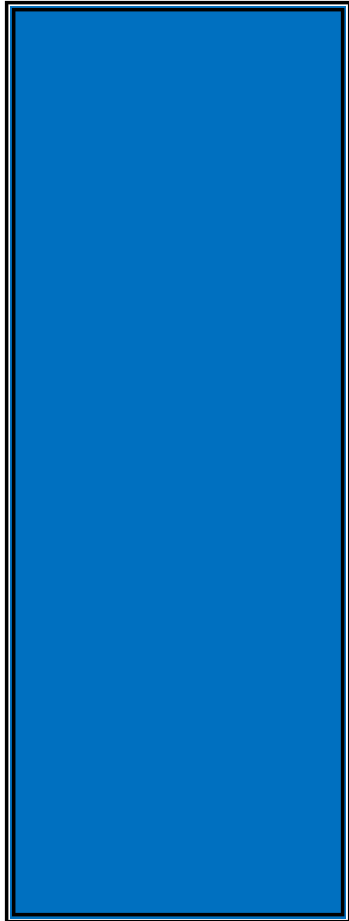
# Existing Use Analysis Being Prepared by the Department



- Recreational designated use changes based on existing use (Sections 103, 116, 204 and 206)
- Designated Uses for waters within Los Alamos National Laboratory (Sections 126, 128 and 140)



# Criteria Applicable to Existing, Designated or Attainable Uses (20.6.4.900 NMAC)



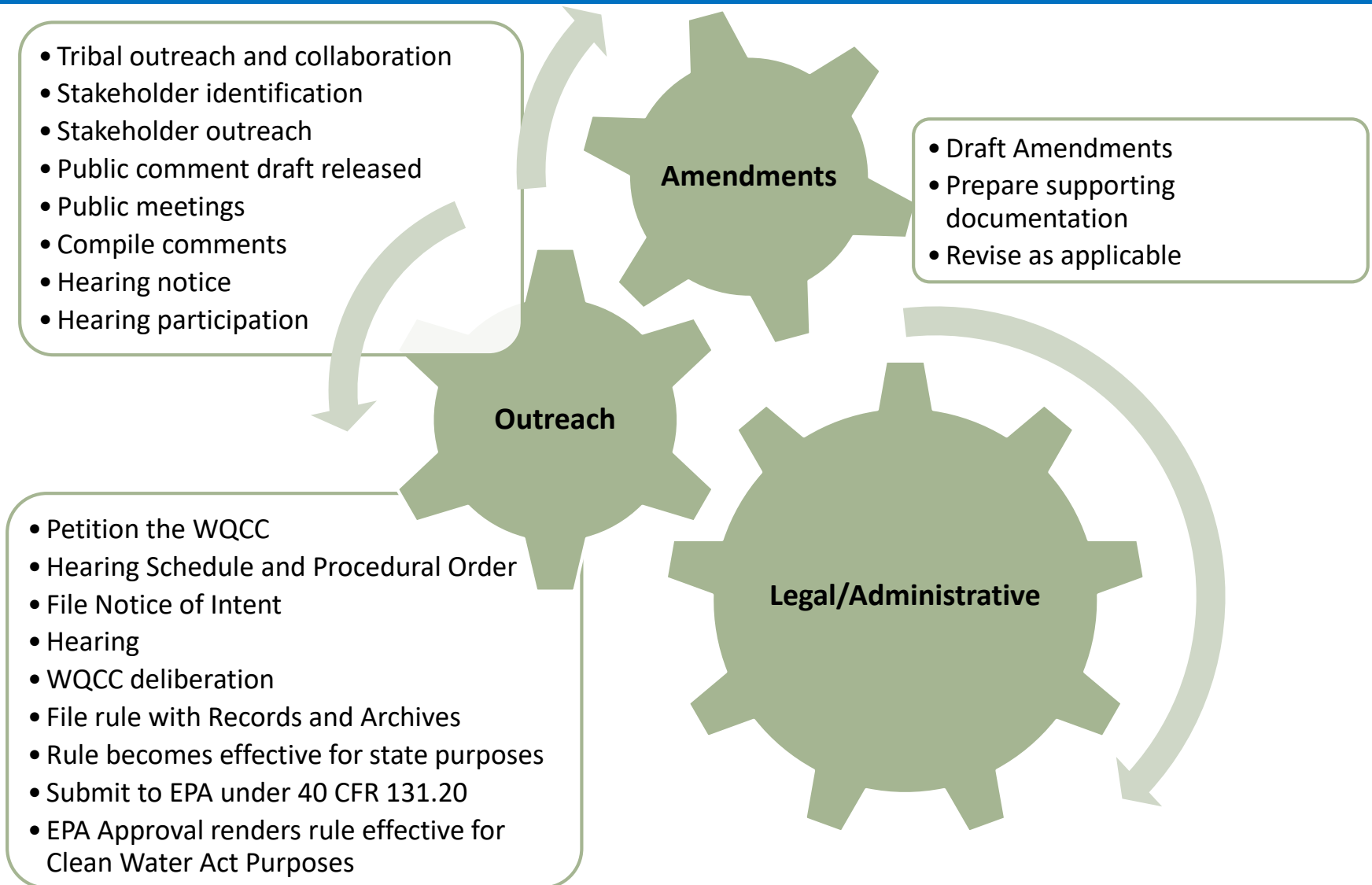
- Primary Contact Criteria
- Aluminum (dissolved and total recoverable)
- Updates to the aquatic life and human health criteria
- Updates to ammonia criteria



### III. Process and Tentative Timelines



# Rulemaking Process



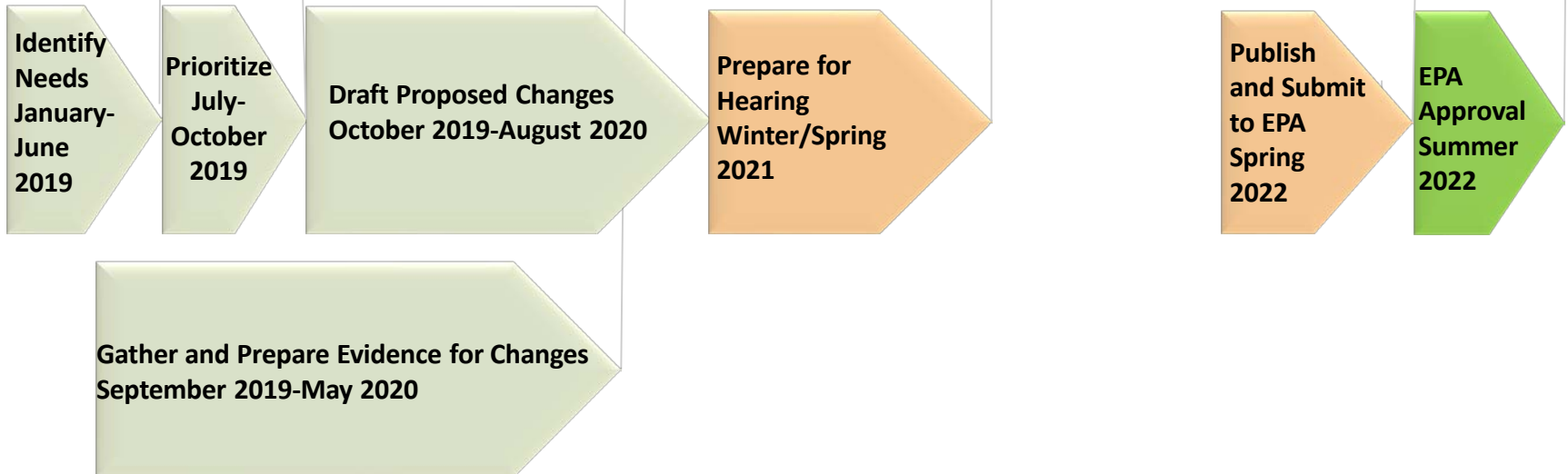


# Administrative Requirements

Task	Responsible Entity	Estimated Timeline
Outreach in accordance with the WQMP/_CPP	NMED/SWQB	July 2020
Draft out for public review and comment	NMED/SWQB	November 2020
Petition to Commission for Hearing Date	NMED/SWQB	August 2020
60-day hearing notice in State Register	NMED/SWQB	February 2021
Submittal of Notice of Intent to Provide Technical Testimony	All	April 2021
Hearing	All	July 2021
Deliberation	WQCC	~Winter 2022
Approval and Statement of Reasons by Commission	WQCC	~Winter 2022
Publish final rule in State Register with effective date	NMED/SWQB	~Spring 2022
Submittal to EPA Region 6 for review and approval	NMED/SWQB	~Spring 2022
EPA Approval for purposes of the Clean Water Act	EPA Region 6	~Summer 2022
Notification of Approval	NMED/SWQB	~Summer 2022



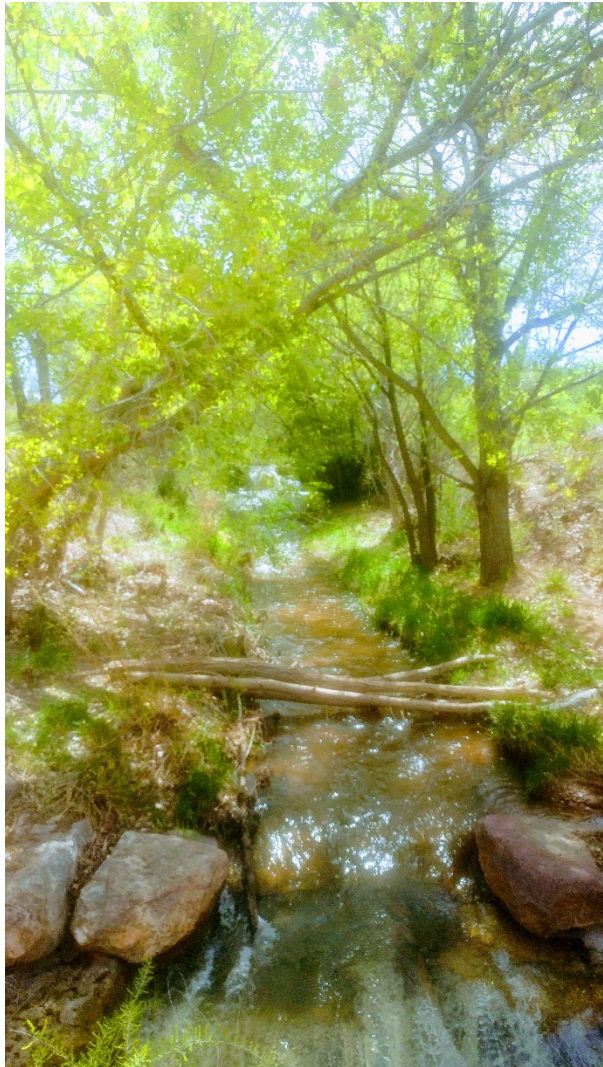
# Tentative Timeline







# Questions/Discussion



## Written Comments

**Wednesday, December 2, 2020**

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Leader

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New Mexico Environment Department

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<https://www.env.nm.gov/surface-water-quality/wqs/>