APPENDIX D
RESPONSES TO COMMENTS

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Comments on Upper Rio Grande – Part 2 TMDL

Sent via Email, February 10, 2005 1:27 PM

COMMENT: I am writing on behalf of the Rio Pueblo/Rio Embudo Watershed Protection Coalition (RP/REWPC) to comment on the Draft Total Maximum Daily Load for the Upper Rio Grande Watershed. We have both general and specific concerns.

First, we feel the document is overly technical and essentially undecipherable by a layman. If the New Mexico Environment Department (NMED) truly wants to engage the public, it must make a better effort to make its data and conclusions intelligible to a more general readership. Moreover, given the complexity of the document, a 30-day comment period is too short a time to digest and respond to the information.

NMED/SWQB Response: Thank you for commenting. NMED understands that TMDLs can be technically challenging for a layperson to read, but NMED is required by the Clean Water Act (CWA) and USEPA to include certain technical aspects in our TMDLs. NMED will continue to revise our TMDL format to try and make them more user friendly.

COMMENT: Second, we feel that NMED must be more comprehensive in collection of data upon which it bases its assessments. For instance, in its rationale for delisting the Rio Quemado for turbidity NMED cites data collected between November 8, 2004 and November 17, 2004. This is a period during which the river is at its lowest flow and the weather is often dry. By contrast, collection of data for the Rio Grande (non-pueblo Santa Clara to Embudo Creek) (Table 6.2, pg. 38) shows consistent exceedence of turbidity water quality criterion in May, during run-off, and August, during the summer monsoons, while in October, turbidity generally falls within acceptable standards. We strongly feel that the November surveys of the Rio Quemado are not comprehensive enough to warrant delisting and suggest that fully comprehensive data be collected for all streams under consideration.

NMED/SWQB Response: The original data used to list the Rio Quemado for turbidity was based on only three data points, with two minor exceedences of the turbidity criterion from samples collected during snowmelt runoff and the day after a large storm event. Minor, temporary exceedences of turbidity criteria during snowmelt runoff and after storm events are common and a natural component of the typical hydrograph in the southwest. In acknowledgement of this situation, WQS 20.6.4.12.J states "Turbidity attributable to other than natural causes shall not…". NMED believes the two minor exceedences noted above fall under this definition, and that the sonde data collected November 2004 more accurately represents turbidity conditions in the Rio Quemado at the sampling location. NMED agrees that comprehensive data should be collected for our assessments and would have preferred to collect and incorporate biological condition into this assessment, but because of time and budget constraints we must use available data in our assessments. The Upper Rio Grande watershed including the Rio Quemado is scheduled for another intensive survey in 2008 and NMED plans to more fully address issues such as the Rio Quemado turbidity listing during that intensive survey.

COMMENT: Third, in NMED's "Integrated List" of upper Rio Grande streams being considered for TMDLs, the listing for the Rio Pueblo (Picuris Pueblo bnd. to headwaters, pg. 106) suggests the "Probable Causes of Impairment" as Benthic-Macroinvertebrate Bioassessments. The survey offers no further information concerning these assessments and it is, therefore, impossible to draw any conclusions about the nature of the stream's impairment. We suggest that NMED must fully explain and substantiate all assessment information in order for the public to understand its rationales for causes and sources of impairment.

NMED/SWQB Response: "Benthic-Macroinvertebrate Bioassessments" is a placeholder Probable Cause of Impairment that NMED includes on the Integrated List when benthic macroinvertebrate data indicate impairment, but the exact cause of the impairment to the benthic macroinvertebrate community cannot be identified with existing data. In Section 2.0 of the TMDL it states that additional information is needed to determine the exact cause of the Benthic-Macroinvertebrate impairment in the Rio Pueblo as well as other reaches in the Upper Rio Grande Part 2 study. The additional data will be collected during the next intensive survey of this area scheduled for 2008.

Thank you for your consideration.

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Sent via Email and FAX, February 10, 2005 4:01 PM

BEFORE THE NEW MEXICO WATER QUALITY CONTROL COMMISSION

IN THE MATTER OF THE REQUEST	**)**
FOR FINAL APPROVAL BY THE	**)**
SURFACE WATER QUALITY BUREAU	**)**
OF THE FINAL DRAFT UPPER RIO	**)**
GRANDE PART 2 TMDL	**)**
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COMMENTS OF LAS CAMPANAS LIMITED PARTNERSHIP

Las Campanas Limited Partnership ("Las Campanas") appreciates the opportunity to comment on the final draft Upper Rio Grande part 2 TMDL ("Draft").[1] In accordance with the 30 – Day Public Comment period commencing January 11, 2005, Las Campanas respectfully submits the following comments. Please note that these comments focus on the issue of the turbidity standard set forth by the Draft for the upper Rio Grande. Regarding "[t]he main stem of the Rio Grande from the headwaters of Cochiti reservoir upstream to Taos Junction bridge," the Draft states: "In any single sample . . . turbidity shall not exceed 50 NTU [nephelometric turbidity units]." Draft at 2.2 (quoting NMAC 20.6.4.114).

After a careful analysis of the Draft, Las Campanas has determined that the New Mexico Environment Department ("NMED") should suspend the current standard of 50 NTU for the upper Rio Grande between non-pueblo Santa Clara and Embudo Creek, pending more information on that stretch of the River. Certainly protection of water qualify is of vital importance to New Mexico and to Las Campanas. Las Campanas realizes that the suspension of such a standard is not an action to be taken lightly. However, a thorough examination of the Draft unavoidably leads to the conclusion that every relevant piece of evidence supports such a suspension. The evidence is summarized below.

The Draft contains a table showing the total suspended sediment ("TSS") and the NTUs for the stretch of the Rio Grande area in question. Draft at 6.1 (Table 6.2). Significantly, the table shows the upper Rio Grande exceeding 50 NTU 71% of the time. That fact alone can be seen as dispositive of whether the 50 NTU standard ought to be maintained. If under the natural condition, a norm would be violated three-quarters of the time, it makes little sense to establish the norm at 50 NTU. Suspending the 50 NTU standard would thus represent an acknowledgement of the reality of the natural condition along this stretch of the Rio Grande.

Another reason for suspending the 50 NTU standard is the fact that the record demonstrates that the NMED lacks the resources to distinguish natural background turbidity from added turbidity. *See* Draft at 6.4.2. Finally, the NMED has no clear ratio demonstrating the sources for any added turbidity. *See* Draft at 6.6. Finally, even if the NMED were able to establish a background level for the upper Rio Grande, the fluctuations are so great that the very

[1] *Available at* http://www.nmenv.state.nm.us/swqb/Projects/RioGrande/Upper/TMDL2/index.html.

concept of a "background level" may be inherently meaningless for this stretch. *See* Draft at 6.1 (Table 6.2).

In short, the NMED:

a) has a turbidity standard which is being violated nearly three-quarters of the time;
b) is unable to determine whether an excess of turbidity causing a violation represents natural background or an additional source;
c) if it is an additional source, is unable to determine how much of that violation represents human-caused additions beyond the natural background; and
d) cannot presently disaggregate the source(s) of such additions.

Each of these factors points directly toward the suspension of the 50 NTU standard as unworkable until more data is obtained.

It is true that, as an alternative, the NMED could adopt an approach like that of the Pojoaque, Picuris and Nambe Pueblos, which limit increases in turbidity to no more than 10% when natural background turbidity is above 50 NTU. *See* 1999 *Revised* Pueblo of Pojoaque Water Quality Standards (PPWQS) at § 3(G);[2] Water quality Code for the Picuris Pueblo (Adopted May 11, 1995) (Revised May 2000) at § 3(G);[3] Water Quality Code for the Pueblo of Nambe (Adopted May 11, 1995) at § 3(G).[4] However, this approach is ultimately counterproductive because: a) anybody who wished to add to the river's turbidity would simply wait until it was at a high volume, for the obvious reason that 10% of a high volume is more than 10% of a low volume, and b) if people are going to put anything into the river, it is best to have them to do so when the river is at low turbidity no t based upon volume of flow; indeed, high flows as in floods may carry higher turbidity. Therefore, the percentage requirement gives people an incentive to invert that principle thereby making the situation worse rather than better.

CONCLUSION

In light of the above considerations, Las Campanas reluctantly concludes the 50 NTU standard for the Rio Grande between Cochiti reservoir north to Taos Junction bridge should be suspended. It is not viable as a standard under present or immediately foreseeable circumstances, and no likely alternative is to be had until sufficient financial resources are committed to develop adequate research data.

Dated: February 10, 2005

Respectfully submitted,
LAW & RESOURCE PLANNING ASSOCIATES,
A Professional Corporation

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[2] *Available at* http://www.epa.gov/ost/standards/wqslibrary/tribes/pojoaque_6_wqs.pdf.
[3] *Available at* http://www.epa.gov/ost/standards/wqslibrary/tribes/picuris_6_wqs.pdf.
[4] *Available at* http://www.epa.gov/ost/standards/wqslibrary/tribes/nambe_ween_6_wqs.pdf.

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NMED/SWQB Response: Thank you for commenting. During the February 2004 triennial review of New Mexico's Water Quality Standards, NMED proposed changes to the turbidity standards to recognize varying background conditions. The WQCC approved these recommended changes. NMED is in the process of submitting proposed changes to EPA Region 6 for review and approval. Your comments have been forwarded to the SWQB Water Quality Standards Coordinator.

Received at the Upper Rio Grande – Part 2, January 25, 2005 Public Meeting

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1) Education is very important both with the youth and the stakeholders.

NMED/SWQB Response: The SWQB agrees with this comment. This is why the SWQB has very active public outreach and watershed protection sections that work with the public to promote education.

2) Mica sand that people have brought into Embudo for landscaping may be a problem for silting in the Rio Grande.

NMED/SWQB Response: The SWQB agrees with this comment and is aware of the building of a "beach" on private property along the Rio Grande near Embudo. This is a nonpoint source issue and therefore NMED does not have regulatory control over this activity, but the watershed protection group plans on working with the property owner to educate them of potential impacts of the Mica sand on the Rio Grande.

3) I'm concerned with cattle being buried near the river and pesticides being washed into the river.

NMED/SWQB Response: The SWQB agrees with this comment and the watershed protection group plans on working with the property owners to educate them of potential impacts of these types of activities.

4) After flash flooding, silt covers the aquatic plants. I'm interested in wetland restoration for wildlife as well as helping to prevent silting.

NMED/SWQB Response: The SWQB agrees with this comment.