

**Summary of Public Comments, Fall 2007
Triennial Review Scoping Phase**

Persons and Organizations that Attended Meetings or Provided Comments

Name	Organization	Org Initials
Kathy Verhage	City of Albuquerque	ABQ
Terry McDermott	Association of Commerce and Industry	ACI
Laura Watchempino	Acoma Pueblo	ACO
John Horton	Associated General Contractors	AGC
Jerry Lovato	Albuquerque Metropolitan Arroyo Flood Control Authority	AMAFCA
Rachel Conn	Amigos Bravos	AMBR
Patricia Dominguez	Bernalillo County	BC
Mary Murnare	Bernalillo County	BC
Joni Arends	Concerned Citizens for Nuclear Safety	CCNS
Anne Wagner	Chevron Mining Inc.	CMI
Walter Bradley	Dairy Farmers of America	DFA
Craig Smith	Glorieta Geosciences representing Dairy Producers of New Mexico	DPNM
Fernando Cadena	Elephant Butte Irrigation District	EBID
John Hernandez	Elephant Butte Irrigation District	EBID
Paul Montoia	City of Farmington Department of Public Works	FARM
Lori Smith	Farmington IPP Coordinator	FIPPC
Rebecca G. (Gert) Perry-Piper		GPP
David Griffin	Holloman AFB	HAFB
Daniel Borunda	International Boundary Water Commission	IBWC
Robert Benavides	Isleta Pueblo	ISL
John E. Antonio	Laguna Pueblo	LAG
Curtis Francisco	Laguna Pueblo	LAG
Michael Saladen	Los Alamos National Laboratory	LANL
Cecilia Abeyta	NM Farm & Livestock Bureau	NMFLB
Brian Lang	NM Game and Fish Department	NMGF
Jack Milarch	New Mexico Home Builders Association	NMHBA
Dominic Silva	New Mexico Home Builders Association	NMHBA
Melanie Teeter	New Mexico Home Builders Association	NMHBA
Kelly Collins	New Mexico Municipal League	NMML
Stephanie Reid	New Mexico Oil and Gas Association	NMOGA
Susan Rich	NM State Forestry – Forest and Watershed Health	NMSF
Ron Loehman	New Mexico Trout	NMTR
Alex Puglisi	Sandia Pueblo	SAN
Robert Gallegos	City of Santa Fe	SF
Aaron Chavez	San Juan Water Commission	SJWC
L. Randy Kirkpatrick	San Juan Water Commission	SJWC
Jolene McCaleb	San Juan Water Commission	SJWC
Trevor Alsop	Southern Sandoval County Flood Control Authority	SSCFCA
Robert Gomez	Taos Pueblo	TAO
Vernon Hershberger	University of New Mexico	UNM
Roy Jemison	USDA Forest Service	USFS
Joel Lusk	U.S. Fish & Wildlife Service	USFWS
Lynn Wellman	U.S. Fish & Wildlife Service	USFWS
Megan Anderson	Western Environmental Law Center	WELC
Erik Schlenker-Goodrich	Western Environmental Law Center	WELC

Comments Received

No.	Comment	Person or Group
1	State standards should not be more stringent than EPA standards, as this would create a moving target of standards and be a disincentive for business and industry to come to NM. Do not include any language such as "meets or exceeds criteria."	ACI
2	Economic development should be considered when setting standards.	ACI
3	The flexibility given to contractors to select and apply BMPs is not necessarily a good thing. It may be easier to have a set of BMPs that are known to be effective and require contractors to implement those and thus avoid fines.	ACI
4	Discharges from Grants and Rio Rancho are a concern for pueblos.	ACO
5	The Rio San Jose stream system, including related drainages and groundwater springs, in northwest New Mexico provides an example of a waterbody or waterbodies dependent on seasonal mountain runoff for recharge. The Acoma-Zuni section of the Colorado Plateau in west-central NM is dominated by Mt. Taylor, a volcano that is several million years old and towers 11,000 feet over most of the area. The mountain receives more than twice the amount of annual precipitation in the lower elevations and receives 12 to 18 inches of snow per year. This provides a higher seasonal runoff than normally expected in a high desert climate zone. The Rio San Jose and related springs could not exist without the seasonal contribution from Mt. Taylor. Except in severe drought years, the Rio San Jose provides a permanent water source (Williams, Jerry L. 1986, UNM). It is important that ephemeral and intermittent as well as perennial streams be evaluated and monitored in this type of hydrologic regime. An additional consideration is the connectivity of surface and groundwater in this regime. Groundwater withdrawals very often draw directly from related surface water flows. (Bluewater Basin Withdrawals and Sources of Water, BIA, Albuquerque Area Branch of Rights Protection, March 1984). Significant drawdowns not only affect groundwater levels and surface water availability, but usually lead to water quality impairment as well. Total dissolved solids and salinity become more pronounced as water levels decline. When stream segments disappear, the entire system is threatened, especially those located near source waters. Severe erosion and sedimentation soon follow. Threatened stream segments should not be ignored. Monitoring of groundwater levels in the alluvial aquifers, sediment sampling and biological evaluations can be performed in these stream segments in order to prevent further degradation throughout the system. (Antidegradation Policy).	ACO
6	The difference between waters of the state and waters of the U.S. would dictate whether playa lakes would have to be protected.	AGC
7	SWQB should clarify the definitions of ephemeral, intermittent and perennial waters.	AGC
8	The ephemeral definition is too stringent.	AGC
9	The definition of perennial waters should be tightened.	AGC
10	The definition of surface waters of the state is too inclusive and should be scaled back and clarified.	AMAFCA
11	Concerned about stormwater permits: continue with current annual not storm-event basis; fugitive water enters their system; whether water bodies in new South Valley project will be considered jurisdictional waters.	AMAFCA
12	Prefers that natural causes or background be addressed through segment specific standards and not by a general standard.	AMBR
13	Asked for clarification on how turbidity assessments are currently being done.	AMBR
14	Requested information regarding on-the-ground impact of the definition of waters of the US. Are activities occurring that should be required to have 401/404 permits that are not required to because of how the definition is implemented?	AMBR
15	Modifying the definitions of perennial, intermittent and ephemeral is a good starting point for dealing with the impacts of global warming.	AMBR
16	Prioritize watersheds that would be most affected by global warming.	AMBR
17	SWQB should be more aggressive with all anti-degradation implementation to address effects of global warming.	AMBR
18	SWQB should consider using anti-degradation as a mechanism for maintaining in-stream flows	AMBR
19	<i>Biocriteria:</i> Amigos Bravos believes that strong biocriteria, both narrative <i>and</i> numeric, are essential for protecting the health of New Mexico's rivers and other waterbodies. We urge NMED to prioritize developing <i>both</i> types of biocriteria.	AMBR
20	<i>Addition of Salinity Criteria:</i> Amigos Bravos supports and appreciates these efforts by NMED.	AMBR
21	<i>Hydrologic Definitions:</i> Amigos Bravos supports revisions to the hydrologic definitions that would result in protecting the water quality of perennial streams during drought conditions or when diversions result in low or little flow in the river.	AMBR
22	<i>Revisions to clarify applicability of criteria, updates to human health and domestic water supply criteria, and revisions to segment specific criteria:</i> Amigos Bravos would need to review these on a case-by-case basis to determine if we support or oppose these proposed changes.	AMBR

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23	<p><i>Primary Contact.</i> One of the primary goals of the Clean Water Act is to make our nation's waters "fishable and swimmable." Specifically, our state standards are supposed to provide for "the protection and propagation of fish, shellfish, and wildlife and provide for recreation <i>in</i> and on the water" (emphasis added) CWA, Section 101(a). Amigos Bravos is pleased that during the previous Triennial Review the water quality standards were changed to ensure that all waters in the state, regardless of whether or not they were detailed in a river specific segment, were granted some form of recreation and aquatic life protections. To be fully consistent with the Clean Water Act, the standards need to go one step further and better protect for recreation in our rivers and other water bodies. To achieve this goal Amigos Bravos recommends the following: Section 20.6.4.99 - this segment for Perennial Waters should have the designated use of primary contact, not secondary contact. The policy of having secondary contact listed as a designated use and then have site-specific primary contact standards should be stopped. Waters that have primary contact as an existing use should also have it as a listed designated use. This policy causes undue confusion to the public, and we would assume to the regulators and policy makers as well. This practice makes it especially difficult to review the 303(d) list because there is no indication what is meant when a segment says that secondary contact is "fully supported." There is no way for the public to know if the primary contact criterion is being supported.</p>	AMBR
24	<p><i>Outstanding National Resource Waters – ONRWS.</i> New Mexico continues to lag behind most other states in terms of number of waters designated and protected as ONRWs. Many other states have classified broad categories of waters, such as waters in National and States Parks, as ONRWs. In many other states, these protections were championed by the state itself. NMED should follow this lead instead of waiting for citizen groups to provide nominations. In addition, EPA has made comments in the past urging NMED to facilitate more ONRW protections. The Triennial Review is a perfect opportunity to provide our state with these crucial water quality protections for our most precious waters as well as to follow EPA's directive to designate ONRWs in New Mexico.</p>	AMBR
25	<p><i>Limited Aquatic Life Use.</i> Amigos Bravos believes that this designated use is ambiguous and confusing. We should return to the pre-2005 policy of setting segment specific uses in the rare case where the other aquatic life uses are not attainable. For instance, in the case of Sulphur Creek, Section 20.6.4.124 it would be simple to say under paragraph B(3) that, except for subsections I and J of 20.6.4.900, the chronic aquatic life criteria do not apply. The limited aquatic life use adds one more layer of confusion to the standards requiring members of the public to flip back and forth between the segment and the back of the standards. In addition, the limited aquatic life use could be abused to lower water quality standards. It is more appropriate to make segment specific changes in cases where the natural conditions have resulted in an impairment associated with either the chronic or acute aquatic life criteria. This method would allow for more fine tuned standards. For example, in some cases it may be that none of the chronic life criteria are attainable, and therefore all the criteria could be listed as not applying, but, in some other cases, it may be that only a couple of the chronic life criteria do not apply and in those cases these constituents could be listed individually. Returning to the pre-2005 policy also ensures that water quality standards are applied equitably and that standards are modified only when natural conditions necessitate such changes. Getting rid of the limited aquatic life use would not require a large overhaul to the standards as presently only three segments have the limited aquatic life designated use.</p>	AMBR
26	<p><i>Protections for Acequias.</i> Many New Mexican families use our state's ditches and acequias as places to go fishing, swimming, and, in one outlandish story from the South Valley of Albuquerque, water skiing! In places like Albuquerque, where much of the Rio Grande is fenced off prohibiting public access, many families picnic next to and recreate in acequias. There are many existing uses of these waters that need protections to ensure public safety and health. The exemption, listed under 20.6.4.11(I)(2), exempting pollution caused by the "reasonable operation of irrigation and flood controls facilities" from numeric criteria for temperature, dissolved solids, dissolved oxygen, sediment or turbidity could remain intact and could potentially be expanded to always apply to acequia/ditch waters. What is needed in acequia/ditch waters, are protections for E.coli, and toxic pollutants such as PCBs and heavy metals.</p>	AMBR
27	<p><i>Global Climate Change.</i> Amigos Bravos urges NMED to consider the future, long reaching effects of Global Climate Change on water quality in New Mexico's rivers and streams. As climate change progresses, water diversions will have larger and larger impacts on our state's rivers and streams, causing many of our traditionally perennial waters to run dry for part of the year. These waters must continue to receive strong water quality protections because, as water becomes more and more scarce, it is all the more important to ensure high quality in the water that we do have. To ensure that global climate change does not result in wide-scale weakening of water quality standards, Amigos Bravos urges NMED to specifically identify global climate change as a "man-made cause" not a "natural cause" of water quality impairment. Additionally, NMED should consider whether water quality standards need to be strengthened or whether guidance for ensuring water quality protection should be provided to account for Global Climate Change. Fundamentally, Global Climate Change is causing – and will increasingly cause – water quality degradation, in particular relative to cumulative impacts caused by existing vectors of water quality degradation. We anticipate that this may require NMED to more carefully consider long-term, cumulative water quality impacts and to adjust water quality management activities accordingly.</p>	AMBR

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28	<i>Piscicides.</i> Amigos Bravos has ongoing concerns about the application of piscicides in New Mexico's waters. We have attached our current piscicide policy as a reference. We urge NMED to address the issues mentioned in our policy in section 20.6.4.16 of the standards.	AMBR
29	<i>Mixing Zones.</i> Mixing zones should be prohibited. In the current mixing zone regulations at 20.6.4.11(D) and (E), toxic mixing zones (mixing zones with toxic substances in them) are allowed. Mixing zones that allow violations of the chronic aquatic life criteria are also allowed. In addition, the current mixing zone regulation requires a continuous zone of passage around mixings zones. Amigos Bravos questions how this is enforced. In New Mexico waters, where the size of even our larger rivers is not large, measuring and enforcing this regulation seems challenging. Many places, such as Oregon, that typically have much larger rivers and streams, are now prohibiting toxic mixing zones. Amigos Bravos urges NMED to propose getting rid of mixing zones completely, and at the very least, prohibit toxic mixing zones. New Mexico's waters are too scarce and precious to allow zones of toxic pollution.	AMBR
30	<i>Compliance Schedules.</i> Under the current system, a water quality standard could be changed during a triennial review and in some cases it would not have to be met under permit conditions for another 8 years. This is an unacceptable length of compliance time. For example, a permittee could receive a new permit immediately prior to new standards being put in place, they would then have 5 years of coverage under their old permit (and old standards), and 3 years of a compliance period when the new one is written. Amigos Bravos urges NMED to address this unacceptably long period (up to 8 years) of noncompliance with state water quality standards. Amigos Bravos' experience is that EPA typically allows at least 3 years of non-compliance with a new water quality standard. The New Mexico Water Quality Standards state at 20.6.4.12(J) that the WQCC will allow compliance schedules on a case-by-case basis. How is the current system allowing for a case-by-case approval by the WQCC when it appears to be a blanket provision allowed by EPA?	AMBR
31	<i>Hardness Based Dissolved Limits.</i> The current system of including the hardness based dissolved criteria equations listed in 20.6.4.900 is confusing and blocks citizen groups from determining if water quality standards for these constituents are being violated. Amigos Bravos would like to know how variable the hardness-based criteria are between waters with different hardness values. If they are not drastically different, Amigos Bravos suggests applying the more protective criteria to all waters. This way a numeric value could be expressed in the standards. If the hardness values result in drastically different standards, then Amigos Bravos suggests providing the hardness value for each segment in the standards to help the public calculate the correct criteria.	AMBR
32	<i>Nutrients.</i> NMED should develop nutrient limits to protect New Mexico's waters. Under the current system wastewater treatment plants are only required to treat to secondary treatment technology limits. This needs to be stopped, especially in some of our smaller streams where there is little to no dilution.	AMBR
33	<i>Detection Limits.</i> Amigos Bravos is concerned about water quality analysis methods that have detection limits that are orders of magnitude above the water quality standard. For example, the most common PCB analysis method has a detection level of 1ug/L when the water quality standard for human health is .00064 µg/L. When a sample is taken and analyzed using methods that aren't sensitive enough to determine if a water quality standard is being met, and then, when there is a non-detect, used to make the determination that the designated uses are being fully supported, it is misleading to the public. At the very least, a column should be added in 20.6.4.900 that lists the detection limit of the method of analysis for each constituent. This would at least allow for the public to know if we have the capability to determine if the standard is being met.	AMBR
34	The tritium standard for domestic water supply should be reduced from to 400 pCi/L. New data suggests that the current standard of 20,000 pCi/L is not protective of human health and is especially dangerous to the placenta. Both Colorado and California have adopted this more protective standard.	AMBR
35	To protect public health and safety, New Mexico should adopt a perchlorate standard of 1 µg/L for domestic water supply. Criteria for irrigation, wildlife habitat and livestock watering should be developed as well. New Mexico has increasing problems with perchlorate contamination as is evidenced by the numerous perchlorate hits in both ground and surface water in the past ten years. In the spring of 1999, perchlorate was identified at HAFB when USGS collected a surface water sample from the Lost River for the National Park Service and found perchlorate at 16,000 µg/L. In 1995 perchlorate was found in shallow alluvial groundwater in Los Alamos at 180 µg/L. At Fort Wingate, perchlorate was found in one groundwater monitoring well at 2,860 µg/L. Although there is currently no federal drinking water standard for perchlorate, the EPA has considered a reference dose of 1ug/L for perchlorate in drinking water. New evidence shows that many Americans are now consuming large quantities of perchlorate in the vegetables that they eat. It is reasonable to assume levels of perchlorate that is safe in drinking water will have to be lowered as the amount of perchlorate we ingest from other sources increases. Vegetables irrigated with perchlorate contaminated water concentrates the contaminant by many factors. For example lettuce concentrates perchlorate by an average factor of 65 at levels found in water of 10 to 130 ppb.	AMBR
36	The standard for dioxin needs to be clarified. It is Amigos Bravos' understanding the current standard was intended to be a standard for Total Dioxin (TEQ), therefore the language in the standards in the pollutant column of the table found at 20.6.4.900(J) should clearly indicate that the standard is for Dioxin TEQ.	AMBR

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37	Concerned about the problem of increasing concentrations of pharmaceuticals and personal care products (PPCPs) in our rivers. Amigos Bravos would like to see NMED develop criteria for these pollutants.	AMBR
38	Would new salinity criteria apply to irrigation return flows, which are currently exempt from NPDES, and will there be any attempt to remove this exemption?	BC
39	If natural causes impair a use then the standard is not appropriate. For example, about fifty percent of the E. coli in the Rio Grande near Albuquerque is contributed by wildlife so the criteria should be revised.	BC
40	Will municipal use be added as a designated use on some streams?	BC
41	What EPA recommended criteria updates for human health and domestic supply are under consideration?	BC
42	Does the list of impaired waters keep getting longer because more waters are polluted or because of changes in how they are assessed? It is difficult to know whether BMPs are effective when new pollutant constituents are constantly being added to the assessment.	BC
43	Stakeholders should be involved early in development of new criteria.	BC
44	Early involvement and awareness of potential changes will allow municipalities to budget for participating in the review.	BC
45	SWQB should facilitate discussions with the tribes to better align water quality standards between jurisdictions; resources spent meeting stringent downstream tribal standards could be better spent on more pressing shared concerns.	BC
46	All waters should be viewed as potential water supplies due to impacts from global warming.	CCNS
47	Clarify which method should be used for PCB analysis.	CCNS
48	Standardize reporting of PCBs so that if non-detects are reported as zero, they are flagged as not detected at the detection limit.	CCNS
49	CCNS supports the NMED October 15, 2007 list of significant changes under consideration for the Triennial Review.	CCNS
50	<i>Plutonium and other Alpha-emitting Radionuclides.</i> The plutonium standard for domestic water supply should be tightened by about 100 times. The current maximum contaminant level (MCL) for alpha-emitting transuranic radionuclides is 15 picocuries per liter. Considering that global warming and climate change will increase the reliance of New Mexicans on all water for drinking water, the Department must take the necessary steps during the Triennial Review to lower the standards for alpha-emitting transuranic radionuclides. The Department must enforce Governor Richardson's Q2, which takes a holistic approach to water, addressing both water quality and water quantity. On November 2, 2005, Governor Bill Richardson wrote a letter to Stephen L. Johnson, EPA Administrator supporting the need to lower the standards for plutonium and other alpha-emitting, long-lived transuranic radionuclides as part of its drinking water standards, http://www.ieer.org/reports/badtothebone/richardsonltr.pdf . The Institute for Energy and Environmental Research (IEER) is leading a national effort, based upon new scientific evidence, to encourage the Environmental Protection agency (EPA) to lower the standards. New data supports such an action "in order to maintain approximately the same goals in regard to radiation protections that were part of the [EPA] rulemaking when the [maximum contaminant levels] MCL was first promulgated in 1976." Science for Democratic Action, Vol. 13, No. 3, September 2005, p1. The State of Colorado has adopted the lower standard. The standard of the State of Colorado for plutonium-239 for surface water is 0.15 picocuries per liter. It is calculated on the basis of a 30-day rolling average – that is, 30 consecutive measurements are averaged; they may or may not be taken on consecutive days. Colorado's standard is based on the risk of one person in one million developing a cancer from consuming two liters of water per day for 30 years. Id., p. 8. IEER describes the background and rationale of the Colorado Department of Health, Water Quality Control Commission adopting the lower standard. IEER concludes that: The central scientific point of the Colorado rule is that the science has changed, indicating greater risk than previously assumed from exposure to plutonium and americium; therefore, the maximum contaminant limits should be adjusted accordingly." Id. The Department must look seriously at this issue for the Triennial Review given that all water in New Mexico may become drinking water.	CCNS
51	<i>Tritium.</i> The tritium standard for domestic water supply should be reduced from 20,000 picocuries per liter (pCi/L) to 400 pCi/L. New data suggests that the current standard of 20,000 pCi/L is not protective of human health and is especially dangerous to the placenta. CCNS refers the Department to Science for Democratic Action, a publication of the Institute for Energy and Environmental Research (IEER). The February 2007 issue describes the "Healthy from the Start: Building a Better Basis for Environmental Health Standards – Starting with Radiation." www.ieer.org . IEER has concluded: [T]hat 400 picocuries per liter for surface water should be considered as an interim target for offsite surface water at all nuclear power plants and U.S. Department of Energy nuclear sites while a better understanding of the impacts of tritium is developed. This level is 50 times lower than the EPA's current drinking water limit and corresponds to a lifetime risk of a fatal cancer of about one in a million. Significantly, the Department of Energy has already agreed to an action level of 500 picocuries per liter for tritium in surface water in the clean up at Rocky Flats. This level corresponds to Colorado's standard for tritium in surface water. It is based on the dose conversion factor for tritium in EPA's Federal Guidance Report 11 (FGR11). If one uses the most recent guidance, FGR 13, the limit would be 400 picocuries per liter, which has been adopted by the state of California as its health goal.	CCNS

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	Both the Colorado and California levels are set using a one in a million lifetime risk of a fatal cancer, which is the goal of cleanup under Superfund law, formally called the Comprehensive Environmental Response, Compensation, and Liability Act, or CERCLA. The case for tightening the tritium limits as a preventive measure is even more persuasive when one considers the higher [relative biological effectiveness] RBE of tritium, its possible non-cancer health effects, its possible synergisms with chemical toxins, and its potential effects arising from exposure in utero at certain crucial times during pregnancy. Science for Democratic Action, Vol. 14, No. 4, February 2007, p 12.	
52	<i>Perchlorate.</i> In order to protect public health and safety, New Mexico should adopt a perchlorate standard of 1 µg/L for domestic water supply. Criteria for irrigation, wildlife habitat and livestock watering should be developed as well. New Mexico has increasing problems with perchlorate contamination as is evidenced by the numerous perchlorate hits in both ground and surface water in the past ten years. For example, in the spring of 1999, perchlorate was identified at Holloman Air Force Base when the USGS collected a surface water sample from the Lost River for the National Park Service and found perchlorate at 16,000 µg/L. In 1995, perchlorate was found in shallow alluvial groundwater in Los Alamos at 180 µg/L. At Fort Wingate, perchlorate was found in one groundwater monitoring well at 2,860 µg/L. Although there is currently no federal drinking water standard for perchlorate, the EPA has considered a reference dose of 1 µg/L for perchlorate in drinking water. New evidence shows that many Americans are now consuming large quantities of perchlorate in the vegetables that they eat. It is reasonable to assume levels of perchlorate that are safe in drinking water will have to be lowered as the amount of perchlorate we ingest from other sources increases. Vegetables irrigated with perchlorate contaminated water concentrates the contaminant by many factors. For example, lettuce concentrates perchlorate by an average factor of 65 at levels found in water containing 10 to 130 ppb perchlorate.	CCNS
53	<i>Most Sensitive Analytical Methods.</i> CCNS is concerned that in some cases the most sensitive analytical methods are not being used to determine the amount of a contaminant in surface water. 20.6.4.14 NMAC. For example, there are analytical methods with the ability to detect 0.1 parts per billion (ppb) of 1,4-dioxane. Yet, Los Alamos National Laboratory uses an analytical method that provides detection at 50 ppb. Language must be developed to address this issue.	CCNS
54	<i>Narrative Biocriteria.</i> CMI believes that the addition of narrative biocriteria would be a useful tool for the assessment of the health of waterbodies throughout New Mexico. However, to make biocriteria relevant, we would need to review the statewide bioassessment data and analyses used to develop the metrics and ratings needed for biocriteria. We are unsure of the status of these analyses, as they do not appear to be included in the Assessment Protocols for listing of impaired waters.	CMI
55	<i>Salinity Criteria.</i> Salinity criteria are difficult to develop. Sensitivity to salinity in general poorly understood, at best. However, the key is that the relative contributions of ions and cations that comprise "salinity" can vary widely and depending on the relative contribution or "ionic balance" can have substantially different effects on either crop irrigation or livestock watering uses. Any salinity criteria development process will need to address such potential differences.	CMI
56	<i>Hydraulic definitions (ephemeral, intermittent, perennial) to accommodate periodic drought conditions.</i> This issue is very important to a state like New Mexico with widely varying hydrology. CMI agrees that the SWQB should consider refining the definitions and suggest review of regulations in nearby states, such as Arizona and Colorado, which have included some or all of these in their guidance. In addition, it is our understanding that the Western Governor's Association developed a document outlining definitions for these differing hydrologic conditions for streams in the arid West.	CMI
57	<i>Applicability of criteria when water quality impairment is due to natural causes.</i> CMI agrees that water quality criteria can often be exceeded due to natural causes in western streams. This is generally a function of the base geology of the west, which is markedly different from laboratory waters used for toxicity tests that are the basis for EPA water quality criteria development. Our recommendation is that in such circumstances, the WQS document should acknowledge that this condition can occur and that basic water quality criteria may not be applicable. However, the guidance should state that alternate, site-specific criteria based on the ambient conditions should then be considered, as long as there is a finding that the exceedences are indeed due to natural, or uncorrectable man-induced, conditions and that the resulting ambient standards are still protective of the attainable uses. Of course, the WQS already create an exception for the numeric criteria for temperature, dissolved oxygen, sediment and turbidity attributable to natural causes (20.6.4.11.I(1) NMAC) and may only need to be expanded to include other parameters.	CMI
58	<i>Revisions to segment-specific criteria.</i> CMI believes that segment-specific criteria should be developed for the Red River, specifically for aluminum. The current aluminum criteria in the WQS (20.6.54 NMAC) are based on an EPA criteria document that is almost 20 years old. As a result, many streams, not just the Red River, have had exceedences that do not always indicate actual impairment of the aquatic life uses. Alternate approaches to segment-specific aluminum criteria for the Red River could be a simple re-interpretation of the 1998 criteria, as has been done in Utah and Colorado, or a more complete criteria update, based on incorporation of new literature. CMI would be willing to work with NMED SWQB on such an analysis for the Red River.	CMI

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59	<i>Potential update to WQ criteria.</i> CMI also has suggestions for updates to other statewide criteria. Specifically, CMI is aware of a useful resource available to the SWQB to assist in updating aluminum and other metals criteria in New Mexico. This resource is a study conducted by the Arid West Water Quality Research Project, and EPA-funded research project managed by Pima County Wastewater Department, Tucson, AZ. The study was entitled "Evaluation of the EPA Recalculation Procedure in the Arid West." (http://www.pima.gov/wwm/wqrp/index_research.htm). As part of this evaluation, a number of water quality criteria were updated with new scientific literature, adding considerable information to their respective toxicity databases. Available updates were provided in the report for aluminum, ammonia, copper, diazinon, and zinc. EPA has since produced a new diazinon criteria document. However, the others would represent significant improvements over current criteria in the New Mexico WQS. In addition, Colorado and Idaho have recently adopted cadmium criteria that could also provide valuable new information for New Mexico WQS. Lastly, as part of EPA risk assessment efforts on the CMI (Molycorp) Questa Mine Site, new aquatic life acute and chronic molybdenum criteria were developed that could be useful on a statewide basis.	CMI
60	We have serious concerns and objections to the current definition of "surface water(s) of the state." These concerns and objections have been expressed in previous discussions regarding the NPDES permit program. Rather than repeat those discussions I simply draw your attention to them and request that you limit the extent of these standards to those waters for which standards are required under the federal Clean Water Act or for which the WQCC has determined that inclusion is necessary to assure protection of specific designated uses.	DFA
61	Use indigenous test animals for biocriteria development.	EBID
62	Leave salinity criteria unchanged.	EBID
63	Leave control of produced water to NPDES, OCD and the BLM.	EBID
64	Do not add Section 900 criteria for salinity because no number will be able to be met.	EBID
65	The NM WQ Act has a "natural causes" exception (74-6-12.H) for numerical standards for dissolved solids content.	EBID
66	Only site-specific and not general changes should be made to the standards.	EBID
67	Regarding criteria updates, SWQB should ask EPA for a letter indicating what needs to be changed.	EBID
68	SWQB should consider a phosphorous criterion for Elephant Butte and Caballo reservoirs.	EBID
69	Limit the definition of "surface waters of the state," to exclude irrigation canals, irrigation drains and diversions off the stream if they are operated by an irrigation district, a conservation district or an acequia."	EBID
70	Retain the 20.6.4.6(B) language "where practicable."	EBID
71	Retain language that BMPs are not mandatory for nonpoint source pollution control purposes.	EBID
72	Do not change definitions of aquatic life uses.	EBID
73	Do not change the definition of natural causes.	EBID
74	Do not attempt to adopt controls on pesticides as during the last triennial.	EBID
75	Develop a statistically sound sampling program.	EBID
76	The city has a hard time meeting the aluminum standard because of high background levels of aluminum.	FARM
77	How will the contributions of natural causes will be determined?	FARM
78	Metals standards for streams are represented as dissolved. However, permits for WWTP and Local Limits calculations are written as total. Some of the translator formulas are in the standards, however many are not. It would be helpful, if those were somewhere in the standard, even if they are one to one. This way everyone will be on the same page.	FIPPC
79	Dairies are unhappy about the current definition of "surface waters of the state."	DPNM
80	SWQB should evaluate the economic effect of standards changes, particularly on small business and referred us to requirements of the Small Business Regulatory Relief Act.	DPNM
81	Clear Creek is a tributary of the Jemez River, not of the Rio Puerco.	GPP
82	Ponderosas Vallecito Creek is not perennial in times when there is no drought.	GPP
83	The Rio Guadalupe should not be designated Outstanding Natural Resource Water subject to temporary degradation (greater than it is already degraded) through the introduction of piscicides into same.	GPP
84	No "addition," revision," "update," etc. should permit the use of piscicides in any waterbody identified ONRW or otherwise in the State of New Mexico, meaning that water quality criteria should not contain any antidegradation policy permitting such, even "temporarily."	GPP
85	How do water quality standards protect threatened species that occur in playas? Noted that the threatened pupfish survives on the base.	HAFB
86	Does SWQB plan to incorporate endocrine disruptors into the standards?	HAFB
87	Invasive species can also have positive effects on water quality, such as when beetles killed salt-cedar resulting in water quality improvements.	HAFB
88	Why are salinity standards being pursued in the Lower Pecos but not the Rio Grande?	IBWC

No.	Comment	Person or Group
89	<i>Tribal Jurisdiction.</i> The Pueblo of Isleta strongly believes that the Segment descriptions of each waterbody in which waters under tribal authorities are located should be specifically rewritten to clearly document the Tribe's authority.	ISL
90	<i>Designated Uses Segment 206.4.105.</i> Although the Pueblo of Isleta recognizes that New Mexico has actually promulgated site-specific bacteria criteria for this segment that provides protection of primary contact, its standards only designate secondary contact usages. This shortcoming constitutes an avoidance of national regulations while providing "ammunition" for those trying to demonstrate differences between Tribal and State of New Mexico water quality standards.	ISL
91	<i>Protection of Tribal Criteria.</i> A perusal of the State's standards convincingly documents that in too many instances New Mexico criteria are significantly more lenient than those adopted by Tribal authorities. Such differences are most strikingly apparent when you compare the State's NMAC 20.6.4.900.J. "toxics" criteria with those adopted by the Pueblo of Isleta. We have noted that some of these differences flow from the State of New Mexico's historical application of a 10-5 excess cancer risk [NMAC 20.6.4.13.F.(2)(a)] while our criteria are based on the EPA recommended 10-6. Regardless of the justification, the State of New Mexico's standards are not protective of the Pueblo of Isleta standards.	ISL
92	The Pueblo of Laguna obtains its drinking water from shallow aquifers. These shallow aquifers are susceptible to contamination from upstream sources. The Pueblo requests that any proposed revisions to the New Mexico WQS take into account the effect of upstream sources on the quality of the drinking water supply for the Pueblo and ensure that the Pueblo's drinking water supplies are protected. The Pueblo may also be interested in an increased frequency in water quality monitoring in certain key areas upstream from its waters.	LAG
93	The gross dewatering of the Rio San Jose upstream of the Pueblo causes serious water quality issues for the Pueblo. NMED should propose revisions to the New Mexico WQS that include minimum flow provisions or otherwise prevent the Pueblo's water quality from being degraded in this manner.	LAG
94	The Pueblo of Laguna is also concerned that its cultural use of surface water bodies be protected. The Pueblo and its members conduct ceremonial activities in surface water bodies both on and off Pueblo of Laguna lands. Ceremonial use of these surface waters has taken place since time immemorial and is central to the cultural survival of the Pueblo. The Pueblo of Laguna requests that any proposed revisions to the New Mexico WQS for water bodies upstream from the Pueblo protect the Pueblo's cultural use of these surface waters. Since ceremonial and cultural uses may involve immersion and ingestion of the water, these waters should be protected in a similar manner to drinking water.	LAG
95	Due to the hazardous nature of uranium and its daughter decay products, the Pueblo of Laguna has been and continues to be highly concerned with uranium in surface waters. Currently the New Mexico WQS contain a numeric criterion of 5,000 µg/L for surface waters designated for domestic water supply. § 20.6.4.900.J. NMAC. The Pueblo requests NMED to review this standard to ensure it meets acceptable human health standards, including comparing it to standards set by other jurisdictions to determine whether a more stringent standard may be warranted. Actions may also need to be taken to meet other tribal standards downstream. Moreover, the New Mexico WQS state that "[t]he radioactivity of surface waters of the state shall be maintained at the lowest practical level and shall in no case exceed the criteria set forth in the New Mexico Radiation Protection Regulations, 20.3.1 and 20.3.4 NMAC." § 20.6.4.13.G NMAC. The Pueblo of Laguna requests NMED to consider defining "lowest practical level" in the New Mexico WQS and setting specific numeric levels of radioactivity in accordance with definition for the water bodies upstream of Pueblo of Laguna lands, if the lowest practical levels are less than 5,000 µg/L.	LAG
96	Turbidity continues to be an issue for surface waters within the Pueblo of Laguna. Currently the New Mexico WQS apply narrative criteria for impairments caused by turbidity and provide authorization for "limited-duration activities necessary to accommodate dredging, construction or other similar activities and that cause the criterion to be exceeded...provided all practicable turbidity control techniques have been applied and all appropriate permit and approvals have been obtained." § 20.6.4.13.J. NMAC. The Pueblo requests that NMED consider a more stringent turbidity standard for water bodies upstream from Pueblo of Laguna lands as well as objective standards for approving the activities described above, especially activities associated with Clean Water Act § 404 permits.	LAG
97	Ceremonial uses should be protected when they occur in customary but non-reservation locations.	LAG
98	How does SWQB address natural causes, particularly in regard to selenium and aluminum and stormwater flows?	LANL
99	The Laboratory is supportive of the following suggestions brought to our attention by NMED and members of the public: addition of narrative bio-criteria to protect the health of aquatic biological communities, and revisions to clarify applicability of criteria when water quality impairment is due to natural causes. Specific examples of background issues included selenium and aluminum.	LANL
100	The Laboratory has developed a tool that might be used to identify background constituent levels during an evaluation of site specific data. This tool could be incorporated into the NMED's Water Quality Management Plan and/or Surface Water Assessment Protocol. The Laboratory would also recommend that language be developed and incorporated into the standards to address background issues especially when water quality impairment is due to natural causes.	LANL

No.	Comment	Person or Group
101	The Laboratory recommends that NMED work closely with the Laboratory and other stakeholders when modifying the hydrologic definitions (ephemeral, intermittent, perennial). There have been numerous discussions and lengthy debates regarding revisions to the definitions at previous triennial review hearings. It may be beneficial to work out some of the issues and come to some consensus prior to the public hearing.	LANL
102	Keep NMFLB in the loop on the development of biocriteria.	NMFLB
103	Consider interstate compacts when developing changes to salinity criteria.	NMFLB
104	Meet with OCD, oil and gas, agriculture, industry, dairy producers, other agricultural producers and ISC when considering changes to salinity criteria.	NMFLB
105	The Surface Owners Protection Act may protect landowners from saline discharges.	NMFLB
106	There is legislative opposition to the current definition of "surface waters of the state."	NMFLB
107	Provide a definition of "recreational" as used in Criteria for ONRWs Section 20.6.4.9(B)(2)	NMFLB
108	An economic analysis should be part of the ONRW process.	NMFLB
109	Potentially affected landowners, water-rights owners and grazing permittees should be notified when an ONRW is proposed.	NMFLB
110	ONRW designation could affect land users and might have environmental justice implications.	NMFLB
111	Concerned regarding the application of hydrologic definitions to the definition of surface waters of the state (wondering if the definition encompasses ephemeral and intermittent).	NMFG
112	Supports salinity criteria for aquatic life uses; there is preliminary information that suggests salinity fosters golden algae blooms in the Lower Pecos.	NMFG
113	Biocriteria should address invasive species (natural vs. non-natural) in the context of being a source/cause of biological impairment.	NMFG
114	A narrative biocriteria for aquatic nuisance/invasive species is well founded.	NMFG
115	The definition of "waters of the state" is too expansive; every drop of water is covered by this definition.	NMHBA
116	If NM gets NPDES primacy, then the definition of "waters of the state" will be applied to permits.	NMHBA
117	Cities are using the state's definition of "surface waters of the state."	NMHBA
118	How does SWQB differentiate between natural and human-caused conditions? For example, if a flood causes sediment runoff from a construction site, is the resulting sedimentation in the river a natural or human-caused product?	NMHBA
119	Contractors would like to know how far they need to go in reducing sediment.	NMHBA
120	Stormwater waivers should be allowed for discharges into ephemeral streams. Let's protect some real waters (instead).	NMHBA
121	Builders have to apply BMPs but a city may not have to. Therefore, sediment downstream of a construction site may not be from that site at all, but rather from the city that did not implement BMPs.	NMHBA
122	Subdivisions platted long ago cannot get low erosivity waivers for NPDES stormwater permits.	NMHBA
123	Why do builders have to install BMPs if the city has already installed AMAFCA pollution controls? Developers already paid for BMPs and should not have to pay for more pollution controls. City needs to maintain these controls but does not always do so.	NMHBA
124	The city's MS4 stormwater permit requirements are too stringent.	NMHBA
125	Has the SWQB written any UAAs?	NMML
126	Are there any waters classified as not "fishable/swimmable?"	NMML
127	How would salinity criteria for the Pecos take into account natural conditions, considering that salinity in the Pecos River is naturally high?	NMML
128	Are there other places besides the Pecos River where lack of salinity criteria is a problem; what designated uses besides irrigation have salinity criteria; and why focus on irrigation use?	NMML
129	The definition of "tributary" is too inclusive and should be clarified.	NMML
130	Are nutrient criteria being addressed/developed? Stakeholders should be involved early in the development of biocriteria and nutrient criteria. The Arid West Water Quality Research Project recently published a helpful guide.	NMML
131	Municipal League is not getting all notices from NMED.	NMML
132	LANL has been required by the state's certification of its NPDES permit to use the congener method for PCB analysis, which has a low detection limit but is not EPA-approved. Expressed concern that other dischargers will be required to use the more expensive method and interested in what will be done if PCB exceedences are found to be widespread.	NMML
133	The general criterion for turbidity in 20.6.4.13 NMAC should be clarified.	NMML
134	Would like to review any antidegradation reviews that have been completed.	NMML
135	When biocriteria are developed, will there be the option to use the biocriteria instead of chemical criteria to decide impairment? Would like to see use of a weight-of-evidence approach instead of independent applicability.	NMML
136	Interested in any changes being proposed to the selenium or arsenic criteria and in how the state derives its arsenic criteria.	NMML

No.	Comment	Person or Group
137	Will a definition be proposed for the "reasonable operation" of irrigation and flood control facilities per the Water Quality Act (74-6-12.H)?	NMML
138	What is the outreach process for the triennial? Wants to make sure all interested parties are receiving notifications.	NMML
139	The term "interrupted" should be incorporated back into the standards	NMSF
140	Concerned about potential impacts to water quality from improper disposal of mined deep brackish waters.	NMTR
141	NMED should look at the stream condition index developed by Peter Stacy at UNM as biological criteria are developed.	NMTR
142	Requested that all draft proposals be distributed to all tribal contacts.	SAN
143	The process for proposing amendments to standards should be made easier for groups outside the Environment Department.	SAN
144	Individual meetings with tribes should be held after the public discussion draft is distributed.	SAN
145	Are any new ONRWs being proposed?	SJWC
146	Will there be any attempt to get rid of exemptions for natural causes?	SJWC
147	Asked for a list of criteria updates being proposed.	SJWC
148	<i>ONRWs.</i> SJWC is concerned that the current 20.6.4.8(A)(3)(a) language (degradation shall be allowed only when such degradation can be shown to result in restoration or maintenance of the chemical, physical or biological integrity of the ONRW) will prevent important public health and safety activities if such activities temporarily degrade ONRW water quality. Such activities would include the use of pesticides to control the West Nile virus, firefighting activities and road or bridge repair. SJWC plans to petition the WQCC to adopt language that would allow such public health and safety activities and proposes working with SWQB to draft language acceptable to both parties.	SJWC
149	<i>Selenium Criteria.</i> Selenium criteria are of particular concern to SJWC and other San Juan River Basin stakeholders because of high natural background levels of the pollutant. Selenium criteria have been addressed during the last three Triennial Reviews (with extensive scientific testimony provided during the 1998 Triennial Review), and SJWC suggests that SWQB not propose any change to the existing criteria until such time as EPA issues revised national criteria. EPA has been working on the selenium issue for approximately a decade and has not yet been able to reach a decision. There is no reason for the State to reconsider the existing criteria absent EPA action.	SJWC
150	<i>Defining "Natural Background."</i> SWQB has identified a need to clarify the applicability of water quality criteria when impairment is the result of natural causes. Based on the discussion at the November 15 stakeholder meeting, it appears SWQB is considering defining "natural background" to require a Use Attainability Analysis" (UAA) to "prove" ambient pollutant levels. Unfortunately, UAAs are expensive, time-consuming, and are unnecessary to establish background levels. Thus, SJWC encourages SWQB to consider other methods to determine natural background levels, such as the approach taken by other states: if a stream exceeds water quality standards, the ambient level of a pollutant is set at the 85th percentile of representative historical data for that pollutant.	SJWC
151	<i>Narrative Biocriteria.</i> SWQB has not yet identified its specific proposal for a narrative biocriteria standard. However, SJWC urges SWQB not to adopt a "reference stream" approach because that approach is scientifically supportable only for high mountain streams. There simply are not appropriate reference streams for large rivers such as the San Juan, the Rio Grande and the Pecos. In addition, when developing its biocriteria proposal, SWQB must consider what to do about invasive species that have become a part of a biological community. For example, efforts are underway in the San Juan River Basin to eliminate certain invasive species (catfish and carp) that compete with endangered species. How would such efforts impact the definition of "biological impairment"?	SJWC
152	<i>San Juan River Basin Criteria.</i> SJWC requests that SWQB consult with SJWC, at the earliest possible time, concerning any proposal to modify existing-selenium criteria, to establish site-specific criteria in the San Juan River Basin, or to take any other action of particular interest to the San Juan River Basin.	SJWC
153	<i>Irrigation Salinity Criteria.</i> With respect to a potential salinity standard, SJWC points out that the surface water quality standards contain a special provision for tributaries of the Colorado river system, including all rivers and streams in the San Juan River Basin. SJWC opposes any effort to remove, modify or supersede this provision and requests that any SWQB proposal for a general salinity standard contain an exception from applicability for streams in the San Juan River Basin. SJWC believes it would be inappropriate for the WQCC to adopt an irrigation salinity standard of general applicability because the impact of salinity depends on soil conditions and irrigation practices. SJWC does not believe that salinity standards for irrigation are appropriate or necessary. Such standards could require permittees to remove salinity. The technology to do so is reverse osmosis, which is very expensive, requires significant energy, and produces salt brine with accompanying disposal problems. Site-specific standards would be more appropriate, if there is a clear demonstration that crop production is actually impaired. Also, if SWQB's goal is to regulate salt discharges by the oil and gas industry, then technology-based standards could be imposed through the permitting process.	SJWC
154	Additional ONRWs should be proposed.	TAO

No.	Comment	Person or Group
155	In the Triennial process, other groups are given more consideration than the tribes.	TAO
156	Will road de-icing practices be affected by a salinity standard?	UNM
157	Why are the water quality standards sometimes more stringent than the drinking water standards?	UNM
158	Would the standards change if someone started using a stream as drinking water?	UNM
159	Asked for clarification regarding who owns produced waters, the person who mines the water or the state. There is current legislation that addresses this when mining occurs on Forest lands; Oil and Conservation Division may have some information on this.	USFS
160	I know the State is working on the definitions for intermittent and perennial, as related to applying water quality standards. We want to reinforce the need to clarify these definitions in the context of the existing climatological, as well as, topographical conditions. Many streams on the Carson National Forest maintain perennial flow at higher elevations, yet the lower reaches (which are often off the Forest) often contain discontinuous flow, isolated pools of water, diminished flow or no flow due to various reasons and processes. Many of these streams also contain obligate wetland species, which indicate the maintenance of high riparian soil moisture conditions, even though surface flow may be limited or lacking. Perhaps an additional flow regime class is necessary to describe these systems (i.e. discontinuous or interrupted flow). Or perhaps the State may consider a flow based approach (i.e. > 1cfs = perennial; < 1cfs = intermittent).	USFS
161	Would also like clarification of 20.6.4.13.1 Temperature (page 11) "high water temperatures caused by unusually high ambient air temperatures are not violations of these standards." Is there a benchmark for comparison, such as the hottest 7-day running average during the past 10 years based on the nearest climate station, or something like that?	USFS
162	The State is working on a wetland classification using the HGM approach that would become part of the water quality standards. Not sure if this is a triennial review question, but would like to know about the status and time frame for implementation and clarification of how it would be implemented.	USFS
163	Support the development of biocriteria.	USFWS
164	Natural causes should be addressed on a segment-specific basis.	USFWS
165	Asked whether human health criteria should apply to water that is applied to crops.	USFWS
166	Incorporate the term "interrupted" back into the standards.	USFWS
167	What is the process for determining which waters are ephemeral or intermittent?	USFWS
168	What is the mechanism that is used to derive wildlife criteria?	USFWS
169	Segment-specific criteria or ONRW nomination is needed to protect the Black River, which contains an endangered species of mussel; the current ammonia and salinity criteria do not support this mussel.	USFWS
170	Support the refinement of salinity criteria on the Pecos but wonder how lower standards would be met if natural levels are high.	USFWS
172	Concerned about how water quality standards will be affected by global climate change.	USFWS
173	A "precautionary principle" could be added to 20.6.4.8 ANTIDEGRADATION POLICY AND IMPLEMENTATION PLAN as new item (6) to state, "Where uncertainty exists, the Water Quality Commission's duty is to protect water quality for all potential beneficial and existing uses. Where scientific evidence is preliminary and not yet conclusive regarding the management of the quality of Waters of the State, it is prudent and in the public interest to adopt "precautionary principles" in protecting these water resources for all potential beneficial and existing uses. Therefore, when the Commission finds that an activity raises threats of harm to human health or the environment, or if there is the prospect of serious or irreversible environmental damage, precautionary measures should be take even if some cause and effect relationships are not fully established scientifically." and that's it. Perhaps a definition of "precautionary" would be necessary though.	USFWS
174	SWQB should begin thinking of ways to integrate the global warming issue into the Water Quality Standards so that NM waters can withstand or buffer effects, possibly by identifying watersheds more at risk of effects of global warming; priorities could be based on ecoregion, biological impairments, etc.	WELC
175	Does SWQB have any evidence regarding the existence or effectiveness of BMPs put in place because of oil and gas operations?	WELC
176	Does SWQB have any evidence of waters not considered SWQB waters of the United States being impacted by lack of CWA coverage?	WELC
177	SWQB should initiate more comprehensive ONRW nominations; for example, nominate all roadless areas and wilderness areas.	WELC