



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 Elm Street, SUITE 500
DALLAS, TEXAS 75270

July 9, 2021

Jennifer Fullam
Standards, Planning & Reporting Team Leader
Surface Water Quality Bureau
New Mexico Environment Department
1190 S. St. Francis Dr.
Santa Fe, NM 87505

Re: Use Attainability Analysis for Select Non-Perennial Reaches in Classified Waters
20.6.4.101-20.6.4.899 NMAC

Dear Ms. Fullam:

I am writing in response to your request for a preliminary review of the Surface Water Quality Bureau's (SWQB) Use Attainability Analysis for Select Non-Perennial Reaches in Classified Waters 20.6.4.101-20.6.4.899 NMAC (2021) supporting proposed revisions to the New Mexico Water Quality Control Commission's (Commission) *New Mexico Standards for Interstate and Intrastate Waters* (20.6.4 NMAC). Although resource limitations prevent providing a detailed analysis, I can provide some general thoughts on this use attainability analysis (UAA). The general comments provided here do not represent a finding under §303(c) of the Clean Water Act (CWA) or Standards Regulation (40 CFR 131). Any decisions on new and revised water quality standards will be made by Environmental Protection Agency (EPA) following their adoption by the Commission and submission to Region 6.

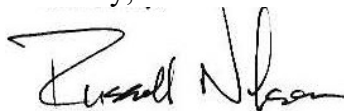
The SWQB has expended significant effort over time to ensure that appropriate uses are designated in all waters in New Mexico. This effort is reflected in the development of provisions in 20.6.4. NMAC that are consistent with the Water Quality Standards regulations at 40 CFR 131 that effectively establish a rebuttable presumption that the CWA §101(a)(2) goal uses are attainable in the nation's waters. The SWQB has worked to identify those waters that support CWA §101(a)(2) uses as well as those that cannot support these uses. That effort was reflected in the SWQB's proposals that led to establishing 20.6.4.98 NMAC that was adopted by the Commission in 2005 and approved by the Environmental Protection Agency (EPA) in 2006.

Consistent with 40 CFR 131.10, the SWQB developed this UAA to evaluate the designated uses for a subset of waters/tributaries currently defined in waters within 20.6.4.101 through 899 NMAC that should have been addressed in the Commission's 2005 revisions. Specifically, this UAA evaluates the current designated uses for regulatory segments 20.6.4.108, 20.6.4.115, 20.6.4.206, 20.6.4.208, 20.6.4.209, 20.6.4.215, 20.6.4.220, 20.6.4.307, and 20.6.4.309 NMAC in an effort to determine if there are non-perennial waters/tributaries in these segments that cannot support the current designated aquatic life uses and should have been previously included in 20.6.4.98 NMAC.

This UAA provides a discussion of the CWA and federal regulatory requirements but goes further by tying that to a discussion of the State's authority and the regulatory procedures specific to amending the standards at 20.6.4 NMAC. The UAA also includes an antidegradation evaluation required by 40 CFR 131.12 but not typically included in a UAA. It also identifies threatened and endangered species associated with the regulatory segments where revisions are proposed providing important context to conditions in these waters. Although not specifically required in a UAA, the inclusion this information is important in that it provides context on both the federal and state requirements related to the proposed revisions for the Commission and the public. Specifically, the UAA provides a site assessment for the waters proposed for revision and data intended to demonstrate that the current designated aquatic life use is not attainable based on one of the factors identified under 40 CFR 131.10(g) and to describe what the highest attainable aquatic life use is in these waters. Based on my analysis of the supporting data and conclusions, this UAA appears to support the SWQB's conclusion that current designated uses in the defined segments are not attainable and that the highest attainable uses recommend here are appropriate given the conditions in these individual waters.

I appreciate the SWQB's efforts in developing this UAA and its efforts to ensure appropriate designated uses are adopted. I also appreciate the opportunity to review this UAA and look forward to the Commission's upcoming hearing and the eventual submission of revised water quality. If you have any questions, please contact me at nelson.russell@epa.gov or (214) 665-6646.

Sincerely,

A handwritten signature in black ink that reads "Russell Nelson". The signature is written in a cursive style with a large, stylized "R" and "N".

Russell Nelson
Regional Water Quality Standards Coordinator