



MICHELLE LUJAN GRISHAM  
GOVERNOR

JAMES C. KENNEY  
CABINET SECRETARY

February 27, 2024

The Honorable Michael Regan  
Administrator  
U.S. Environmental Protection Agency  
EPA Docket Center  
Docket ID No. EPA-R06-OW-2023-0566  
Mail Code 28221T  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Submitted electronically via: <https://www.regulations.gov/>

RE: Initial Revised Designation of Certain Stormwater Discharges in the State of New Mexico Under the National Pollutant Discharge Elimination System of the Clean Water Act  
Docket ID No. EPA-R06-OW-2023-0566

Dear Administrator Regan,

The proposed action is a post-*Sackett v. EPA*, No. 21-454, determination that tributary intermittent streams are jurisdictional waters of the United States ("WOTUS") because they meet the Clean Water Act "relatively permanent standard." The State of New Mexico supports this jurisdictional analysis and appreciates the opportunity to submit comments to the U.S. Environmental Protection Agency (EPA) on the Initial Revised Designation of Certain Stormwater Discharges in the State of New Mexico Under the National Pollutant Discharge Elimination System of the Clean Water Act, Docket ID No. EPA-R06-OW-2023-0566.

On behalf of the New Mexico Environment Department (NMED), attached please find our comments regarding the subject rulemaking.

Sincerely,

A handwritten signature in blue ink that reads "James C. Kenney".

James C. Kenney  
Cabinet Secretary

Attachment (1)

cc: Dr. Earthea Nance, Regional Administrator, Region 6, U.S. EPA  
Courtney Kerster, Senior Advisor, Office of Governor Michelle Lujan Grisham  
Dr. Sydney Lienemann, Deputy Cabinet Secretary of Administration, NMED  
Zachary Ogaz, General Counsel, NMED

John Rhoderick, Water Protection Division Director, NMED

**New Mexico Environment Department  
Comments to the U.S. Environmental Protection Agency  
Initial Revised Designation of Certain Stormwater Discharges in the State of New Mexico Under the  
National Pollutant Discharge Elimination System of the Clean Water Act  
Docket ID No. EPA-R06-OW-2023-0566**

**Comment 1:**

The New Mexico Environment Department (NMED) supports the U.S. Environmental Protection Agency (EPA) findings that the Rio Grande from the Otowi Bridge to Cochiti Lake is navigable-in-fact and, therefore, a traditional navigable water designation of certain stormwater.

**Comment 2:**

NMED supports the U.S. EPA jurisdictional analysis that the Rio Grande from the Otowi Bridge to Cochiti Lake is a water of the United States (WOTUS) because it is a continuously flowing water year-round and is a traditional navigable water.

**Comment 3:**

NMED supports the U.S. EPA findings that some of the stream reaches in the Pajarito Plateau canyons are tributaries of the navigable water Rio Grande and are relatively permanent, standing, or continuously flowing bodies of water, and therefore those stream reaches are a WOTUS.

**Comment 4:**

NMED supports the U.S. EPA jurisdictional analysis that the following tributary waters are a WOTUS jurisdictional tributary that meets the relatively permanent standard because they have continuously flowing or standing water year-round:

- Ancho Canyon (Rio Grande to Ancho Springs)
- Canon de Valle (LANL gage E256 to Burning Ground Spur)
- DP Canyon (100m downstream grade control to 400m downstream grade control)
- Los Alamos Canyon (Los Alamos Reservoir to headwaters)
- Sandia Canyon (Sigma Canyon to NPDES outfall 001)
- Water Canyon (within LANL above NM 501)
- Water Canyon (Area-A Canyon to NM 501)

**Comment 5:**

NMED supports the U.S. EPA jurisdictional analysis that the following tributary waters are a WOTUS jurisdictional tributary that meets the relatively permanent standard because they have continuously flowing or standing water during certain times of the year for more than a short duration in direct response to precipitation:

- Acid Canyon (Pueblo Canyon to headwaters)
- Canada del Buey (Rio Grande to Mortandad Confluence USGS NHD Reach Code 13020201000196)
- Canon de Valle (LANL boundary to headwaters)

- DP Canyon (Los Alamos Canyon to 100m downstream of grade control)
- Effluent Canyon (Mortandad Canyon to headwaters)
- Los Alamos Canyon (San Ildefonso boundary to NM-4)
- Pueblo Canyon (Los Alamos Canyon to Los Alamos Wastewater Treatment Plant)
- Pueblo Canyon (Los Alamos Wastewater Treatment Plant to Acid Canyon)
- S-Site Canyon (Water Canyon to headwaters)
- Water Canyon (upper LANL boundary to headwaters)

**Comment 6:**

NMED supports the U.S. EPA determination that stormwater discharges from small municipal separate storm sewer systems (MS4s) located in the Los Alamos Urban Area as defined by the latest decennial census, and MS4s located on Los Alamos National Laboratory (LANL) property within Los Alamos and Santa Fe Counties, New Mexico (the discharges) contribute to violations of New Mexico water quality standards in WOTUS.

**Comment 7:**

NMED supports U.S. EPA designation to cover stormwater discharges from MS4s owned or operated by the following entities in the Los Alamos Urban Area and on LANL property in Los Alamos and Santa Fe Counties:

1. LANL, including Triad National Security, LLC (Triad) and the U.S. Department of Energy's National Nuclear Security Administration (NNSA) located within Los Alamos County and Santa Fe County, New Mexico,
2. Los Alamos County, New Mexico, located within the Los Alamos Urban Area as defined by the latest decennial Census,
3. New Mexico Department of Transportation (NMDOT) located within the Los Alamos Urban Area as defined by the latest decennial Census, and
4. NMDOT located within and interconnected with regulated LANL (Triad and NNSA) storm sewer systems in Los Alamos and Santa Fe Counties, New Mexico.

NMED requests that U.S. EPA add the following entity to the Los Alamos Urban Area and on LANL property in Los Alamos and Santa Fe Counties.

1. LANL, including Newport News Nuclear BWXT-Los Alamos, LLC (N3B) and the U.S. Department of Energy's Environmental Management (EM) located within Los Alamos County and Santa Fe County, New Mexico.