



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202 – 2733

SEP 12 2018

Mr. Larry Dominquez
Chairman
New Mexico Water Quality Control Commission
1190 South St. Francis Drive (87505)
P.O. Box 5469
Santa Fe, NM 87502-5469

Dear Mr. Dominguez:

The Environmental Protection Agency (EPA) has completed its review of the amendments to the *Standards for Interstate and Intrastate Surface Waters 20.6.4 NMAC*. The revisions to the state's water quality standards were adopted by the New Mexico Water Quality Control Commission on January 9, 2018, and became effective as state law on February 13, 2018. The New Mexico Environment Department (NMED) submitted these amendments to the EPA for approval on February 16, 2018. The EPA considered the submission complete upon receipt of the New Mexico Attorney General certification letter dated March 23, 2018.

Your February 16, 2018, letter referred to amendments to portions of Tecolote Creek and provided a supporting use attainability analyses (UAA). The EPA is approving the new and revised provisions to 20.6.4.15 NMAC and 20.6.4.230 NMAC specific to Tecolote Creek. The amendments to 20.6.4.15 NMAC retain the high quality cold water aquatic life use, but exclude the portions of Tecolote Creek downstream of Blue Creek from this regulatory stream segment. The Commission also established 20.6.4.230 NMAC as a separate regulatory stream segment for Tecolote Creek, downstream of Blue Creek to I-25. This amendment designates the coolwater aquatic life use for Tecolote Creek. An evaluation of these revisions is provided in the enclosed Technical Support Document.

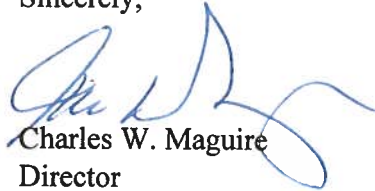
Your letter also referred to amendments to the perennial portions of Dog Canyon Creek and provided a supporting UAA. You state that Dog Canyon Creek is in the Tularosa Closed Basin and for this reason are not requesting EPA approval of the amendments adopted by the Commission. At this time, EPA is not making a determination as to the scope of federal jurisdiction over any waters of the United States or affirming State opinions regarding federal jurisdiction over such waters. As the Commission has not submitted for approval any proposed amendments to the water quality standards for the perennial portions of Dog Canyon Creek, the previously approved coldwater aquatic life use and supporting criteria remain in effect for waters that meet the definition of "waters of the United States" under the federal Clean Water Act

In addition, your letter identified a typographic error and associated correction for the designated aquatic life use that applies to 20.6.4.804 NMAC. The EPA does not consider corrections of inadvertent errors as a substantive amendment to the state's water quality standards. Such amendments are typically allowed by error and severability provisions in state law. The EPA appreciates the notification that this correction has been made.

The approval of new and revised water quality standards is subject to the results of consultation under section 7(a)(2) of the Endangered Species Act (ESA). Section 7(a)(2) of the ESA requires that federal agencies consult with the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS), as appropriate, to ensure that actions they take, fund, or authorize are not likely to jeopardize the continued existence of listed species or result in the adverse modification or destruction of habitat. No species under NMFS jurisdiction are present in the action area. Section 7(a)(2) of the ESA requires that all federal agencies engage in consultation to ensure their actions are not likely to jeopardize the continued existence of any threatened or endangered species or result in adverse modification of designated critical habitat. The EPA has determined that approval of these amendments to the New Mexico *Standards for Interstate and Intrastate Surface Waters 20.6.4 NMAC* will have no effect on federally-listed threatened and endangered species or on critical habitat.

I appreciate the Commission's and NMED's effort in the development of these revised provisions of the state's standards. If you have any questions or concerns, please contact me at (214) 665-7101, or contact Russell Nelson at (214) 665-6646 or nelson.russell@epa.gov.

Sincerely,



Charles W. Maguire
Director
Water Division

Enclosure

cc: Jennifer Fullam, Standards, Planning & Reporting Team Leader
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