STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION

WQCC 17-04(R)

IN THE MATTER OF
PROPOSED AMENDMENTS TO
SURFACE WATER QUALITY STANDARDS FOR
DOG CANYON AND TECOLOTE CREEK,
20.6.4 NMAC

TRANSCRIPT OF PROCEEDINGS

AND COMMISSION DELIBERATIONS

BE IT REMEMBERED that on the 9th day of January, 2018, the above-entitled matter came on for hearing and deliberations before the New Mexico Water Quality Control Commission, taken at the New Mexico Public Education Department, Mabry Hall, 300 Don Gaspar Avenue, Santa Fe, New Mexico, at the hour of 10:02 a.m.

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MR. DOMINGUEZ: With that, we will move to action item number 6, which is WQCC 17-04(R), in the Matter of Proposed Amendments to Surface Water Quality Standards for Dog Canyon and Tecolote Creek, which is 20.6.4 NMAC.

With that, Mr. Verheul, and if you will get together your group of witnesses.

For everybody's note, we've got this listed as an hour. Counsel has indicated to me he thinks this may move quicker than an hour, but it may depend on Howard's questions.

So with that, Mr. Verheul, we'll turn the floor over to you.

MR. VERHEUL: Good morning.

Thank you, Mr. Chair, members of the Commission.

My name is John Verheul. I'm an attorney with the New Mexico Environment Department.

Excuse me.

With me today are two witnesses from the Department's Surface Water Quality Bureau, Ms. Jennifer Fullam and Dr. Bryan Dail.

By way of giving you just a brief overview before I call my first witness -- sorry.

MR. DOMINGUEZ: Actually, sorry to interrupt

you, but I -- in my haste to move things along quickly, I forgot to actually turn this over to the Hearing Officer to actually formalize this as a hearing rather than just an action item for the Commission.

Madam Hearing Officer, the floor is yours.

MS. ANDERSON: Thank you very much, Mr. Chair.

Good morning, everyone.

My name is Erin Anderson. I work for the New Mexico Environment Department. I've been appointed by the Commission to act as Hearing Officer in this case.

So just some preliminaries before we get started.

It doesn't look like we have a large amount of public turnout. Just so we're clear, this is a public hearing. In the back of the room, there's a sign-in sheet. So if there are any members of the public that are here that have signed in and want to make a comment on this, would they please let me know.

Also, if you can't hear me -- I'm moving the mike up, but I don't want to talk like this the whole time -- let me know.

So right now, just before we get started, do we have any members of the public that anticipate giving public comment on this?

I'm not seeing any show of hands.

And if that changes after the witnesses testify -- and again, this may be quicker than we anticipated -- I'm going to ask again if anyone wants to make a public comment to make sure I haven't forgotten anybody.

So with that, we're going to turn it over, we're going to have appearances for the record, and we're going to swear in the witnesses in a group, please.

And Cheryl Arreguin is our court reporter. So nice and loud, and she's going to swear you in after appearances.

MR. VERHEUL: Good morning, Madam Hearing Officer.

John Verheul on behalf of New Mexico Environment Department.

MS. ANDERSON: Good morning.

MS. FULLAM: Jennifer Fullam with New Mexico Environment Department.

MS. ANDERSON: Morning.

MR. DAIL: And Bryan Dail, New Mexico Environment Department.

MS. ANDERSON: Good morning.

(Jennifer Fullam and Bryan Dail were duly sworn.)

MS. ANDERSON: Mr. Verheul, did you want to do openings, a condensed opening or --

MR. VERHEUL: An extremely brief opening statement --

MS. ANDERSON: Okay.

MR. VERHEUL: -- if that's acceptable.

MS. ANDERSON: Sure, yeah.

MR. VERHEUL: Just briefly so the Commission has a high-level overview of what we're doing here today, today the Department is proposing a change in the aquatic life use for a couple of small water bodies in New Mexico. And those changes are as a result of some use attainability analyses, some studies that were done with respect to the background conditions, the fish population, what have you, of those water bodies.

And the reason a public hearing is required is because we're actually changing 20.6.4 New Mexico Administrative Code, which are the standards for water quality in New Mexico, and, of course, pursuant to the Water Quality Act, that requires a public hearing.

So with that being said, may I call my first witness?

MS. ANDERSON: Sure.

And did you want to draw attention to any new exhibits or anything that you prepared?

MR. VERHEUL: The Department has submitted its notice of intent to present technical testimony. The Commission should have those materials before them.

I believe there was also one additional illustrative exhibit that we provided to Pam prior to the hearing that was handed out. It was some larger scale -- these were in our NOI, but we've provided them to the Commission in larger scale so they're a little bit more readable so they can follow along.

MS. ANDERSON: Thank you.

MR. VERHEUL: Okay.

The Environment Department calls Ms. Jennifer Fullam.

JENNIFER FULLAM and BRYAN DAIL

having been first duly sworn or affirmed, were examined and testified as follows:

DIRECT EXAMINATION OF JENNIFER FULLAM

BY MR. VERHEUL:

Q. Please state your name.

A. Jennifer Fullam.

Q. And what is your current position?

A. I'm an environmental scientist supervisor serving as the water quality standards coordinator with the Surface Water Quality Bureau of the New Mexico Environment Department.

Q. And would you please summarize your education and relevant experience.

A. I have a bachelor's degree in biology and a master's degree in environmental science and management. I've been with the State of New Mexico Environment Department since July, 2007, and I've had my current position with the Surface Water Quality Bureau since March of 2017. My resume is NMED Exhibit 1.

Q. And did you prefile technical testimony in this matter?

A. Yes. My prefiled testimony is Exhibit 2.

Q. Do you have any changes or corrections to that testimony today?

A. No.

Q. Do you adopt that testimony here today?

A. Yes.

Q. What is the nature of that testimony?

A. So my testimony describes the federal and state regulations which the Department followed in order to modify an existing classified segment and create two new classified segments within the water quality standards. These segments are associated with perennial reaches of Dog Canyon Creek in Otero County and Tecolote Creek between US I-25 and Blue Creek in San Miguel County.

These proposed changes are based on the results of two use attainability analyses conducted by the Department and provided as Exhibits 11 and 12.

Q. What is the purpose of these use attainability analyses that the Department conducted?

A. The purpose of these UAAs was to determine the most protective, naturally attainable designated aquatic life use for Dog Canyon and Tecolote Creek.

Q. And what were the results of these UAAs?

A. The UAAs demonstrate that the coldwater and high-quality coldwater aquatic life uses are not appropriate for the perennial reaches of Dog Canyon Creek and Tecolote Creek from I-25 to Blue Creek, respectively. This is due to natural ambient conditions found in each of these segments, as Dr. Dail will describe in his testimony.

The UAAs found that the most protective attainable aquatic life use was coolwater.

Q. Could you describe the proposed amendments to the standards?

A. The proposal requests a change from -- of the aquatic life use designation of Dog Canyon Creek and Tecolote Creek from I-25 to Blue Creek from coldwater and high-quality coldwater, respectively, to coolwater.

Q. And what water quality criteria would change

if the designated aquatic life use is changed to coolwater?

A. So the proposed change for Dog Canyon Creek from coldwater to coolwater aquatic life use would change the maximum allowable temperature from 24 degrees to 29 degrees Celsius, it would remove the 6T3 temperature criterion of 20 degrees Celsius, it would expand the upper range of pH from 8.8 to 9, and it would also lower the acceptable minimum dissolved oxygen concentration from 6 milligrams per liter to 5 milligrams per liter.

The proposed change from a high-quality coldwater aquatic life use to a coolwater aquatic life use for Tecolote Creek from I-25 to Blue Creek would increase the maximum allowable temperature from 23 degrees Celsius to 29 degrees Celsius, expand the acceptable upper range for pH from 8.8 to 9, and lower the acceptable -- acceptable minimum dissolved oxygen concentrations from 6 milligrams per liter to 5 milligrams per liter.

In addition, this designated use change would also remove the 4T3 temperature criterion of 20 degrees Celsius, as well as remove the segment-specific conductance criterion of 300 microsiemens per centimeter or less.

Q. So those are the technical details of the criteria.

Could you summarize these changes?

A. Sure. So in short, for both Dog Canyon and Tecolote Creek, the designated aquatic life use change to coolwater would not consider specific conductance or specific temperature criteria, such as the 6T3 and 4T3, it has a greater acceptable maximum temperature, it has a greater pH range, and it has a reduced minimum dissolved oxygen concentration in comparison to coldwater or high-quality coldwater aquatic life uses.

Q. Do you anticipate that there will be any impact on any neighboring land owners or businesses that are near these two water bodies?

A. There are no point source discharges on these segments to which a change in the designated use would impact a discharger; and since the need for the designated use change is to reflect the natural conditions, it's not believed to impact any neighboring land owners or businesses.

Q. With respect to involving members of the public, what actions did the Surface Water Quality Bureau take to engage stakeholders or provide opportunity for public input?

A. In accordance with the Bureau's Water Quality

Management Plan and Continuing Planning Process, we notified potential stakeholders, such as New Mexico Department of Game and Fish, the USEPA -- USEPA, Hermit's Peak Watershed Alliance, the Upper Pecos Watershed Association and the state parks.

After drafting the UAAs, the Bureau solicited public comment from September 1st, 2017, to October 2nd, 2017, and the notice of comment period was published in four newspapers in both English and Spanish. We distributed it -- the notice to 1,514 recipients on the Surface Water Quality Bureau's E-mail recipient list, and we posted the notice on the Bureau's website.

The Bureau also held two public meetings to present the studies and findings. The first one was held September 18th at the Alamogordo Public Library in Alamogordo, New Mexico. The second was held on September 21st, 2017, at New Mexico Highlands University in Las Vegas, New Mexico.

Similarly, a 60-day notification was -- of the hearing was also distributed through three newspapers in both English and Spanish, the Bureau's Surface Water Quality E-mail list and then posted on the website.

Q. Has the USEPA provided technical approval of the UAA?

A. So the Department forwarded the UAAs to EPA

for review on August 31st, 2017. EPA was then contacted on November 6, 2017, for an update on their review. And EPA responded via E-mail on December 13th, 2017, stating that technical approval by EPA is not required and therefore would not be provided until such a time in which the designated use change was completed through the rulemaking process.

MR. VERHEUL: Thank you, Ms. Fullam.

Madam Hearing Officer, I apologize. I should have asked before. Would it be okay if I call and question my second witness and then they would appear as a panel for questioning by the Commission?

MS. ANDERSON: That's fine. Sure.

MR. VERHEUL: Okay. The Department calls Dr. Bryan Dail.

DIRECT EXAMINATION OF BRYAN DAIL

BY MR. VERHEUL:

Q. Dr. Dail, please state your name.

A. Bryan Dail.

Q. Talk directly in the mike.

A. Will do.

MS. FULLAM: Really close.

Q. (BY MR. VERHEUL) And what is your current position?

A. My current position is environmental scientist

with the Surface Water Quality Bureau, New Mexico Environment Department.

Q. Please summarize your education and your relevant experience.

A. I have a bachelor's degree in biology with a chemistry minor from the University of New Mexico and a PhD in microbiology from the University of Georgia.

Q. And was your resume filed as part of our notice of intent?

A. Yes. It is. My resume is filed at Exhibit 3.

Q. Did you also prefile technical testimony in this matter?

A. I did. My prefiled testimony is New Mexico Environment Department Exhibit Number 4.

Q. Do you have any corrections or changes to that testimony?

A. No, I do not.

Q. And do you adopt that testimony here today?

A. Yes.

Q. What is the nature of your testimony?

A. My testimony relates to the Department's proposal to modify two existing classified segments and create two new classified segments in the water quality standards associated with perennial reaches of Dog Canyon Creek in Otero County and Tecolote Creek between

US Interstate 25 and Blue Creek in San Miguel County. The proposal -- proposed changes are based on the results of two use attainability analyses, hereafter UAA, conducted by the Department and provided as Exhibits 11 and 12.

Q. And, Dr. Dail, would you please describe the proposals.

A. Yes. The Commissioners may wish to refer to Tecolote Creek and Dog Canyon Creek watershed maps labeled B1 through B4 that were presented to you, which are the same as in the UAA only produced -- reproduced a little bit larger.

I'll first start with Tecolote Creek and then will describe Dog Canyon Creek.

Tecolote Creek watershed may be delineated into lower, middle and upper sections. The upper section is located upstream of Blue Creek and includes the headwaters within the Santa Fe National Forest. The lower section is nonperennial and includes portions from I-25 downstream to its confluence with the Pecos River near Tecolotito, New Mexico. Finally, the middle section includes the perennial portions from I-25 upstream to Blue Creek, which is the area of focus for this investigation.

Turning to Dog Creek, this watershed may be

delineated into upper and lower sections, with the upper portion originating at an altitude of 9,000 feet in the Lincoln National Forest and the lower portion ending at an altitude around 4,000 feet in the Chihuahuan Desert, approximately 10 miles south of Alamogordo, New Mexico.

Most of Dog Canyon Creek is nonperennial; however, there are two short perennial reaches in the lower section of the watershed. One is located in Oliver Lee Memorial State Park and does not extend beyond the mouth of the canyon. The other short perennial section is approximately 1.4 miles upstream from the park in the Lincoln National Forest. It is both of these perennial reaches that are the focus of today's investigation and proposal.

Currently, Tecolote Creek from I-25 to Blue Creek is classified in water quality standards segment 215 with a designated high-quality coldwater aquatic life use, and perennial portions of Dog Canyon Creek are classified under segment 801 with a designated coldwater aquatic life use.

Following the results of the UAAs, the Department is proposing to create two new classified segments with designated coolwater aquatic life uses, identified as segment 230 for Tecolote Creek from I-25 to Blue Creek and segment 810 for perennial reaches of

Dog Canyon Creek.

Q. And, Dr. Dail, what data does the Department have that support the proposed changes?

A. To evaluate the most protective, naturally attainable aquatic life uses for Tecolote Creek and Dog Canyon Creek, the Department conducted an ecoregional analysis, evaluated existing and modeled air and water temperature data and analyzed available fish community data. For the ecoregional analysis, the Department used landscape level GIS mapping and aerial photos to analyze the geology, vegetation, climate and topography in the targeted watersheds.

The Department also evaluated water temperature data from six thermographs in Tecolote Creek and three thermographs in Dog Canyon and applied the Department's Air-Water Temperature Correlation model, which is based on ambient average July air temperatures, to various locations within the watershed. And this allows us to predict the attainable water temperatures for a given location and stream reach.

Finally, the Department reviewed biological data, such as the temperature preferences of native fish species collected in the middle and upper portions of Tecolote Creek. The Department requested fish collection records for the Tularosa Valley closed basin

from the Museum of Southwestern Biology; however, no records were available from Dog Canyon Creek.

These data are presented in the UAAs for Dog Canyon Creek and Tecolote Creek and submitted as Exhibits 11 and 12.

Q. And, Dr. Dail, would you please summarize the findings that are -- that are contained in those UAAs for the stream reaches that we're talking about today?

A. Certainly. Tecolote Creek from I-25 to Blue Creek is roughly evenly divided between mid-elevation forests, foothill woodlands and shrublands and pinon-juniper woodlands and savannahs, which are all typically warmer and drier that the upper watershed. For all Tecolote Creek monitoring stations examined in the UAA, average air temperatures as modeled for July would be between 18 and 23 degrees Celsius, which the Air-Water Temperature Correlation model translates as attaining a coolwater aquatic life use.

The findings from the model coincide with observed water temperatures near San Geronimo but seem to diverge somewhat at I-25, the lower part of the reach, where the observed water temperatures were exceeding the predicted water temperatures. This indicates that there may be a potential temperature impairment.

Furthermore, Tecolote Creek from I-25 to Blue Creek is dominated by coolwater fish species and communities with a few coldwater brown trout specimens that were found at San Geronimo and a few warmwater or green sunfish in particular species found around I-25, at the bottom of the reach.

Dog Canyon originates in high elevation mountains but quickly transitions into lower elevation woodlands and grasslands, eventually draining into the Tularosa Valley closed basin in the Chihuahuan Desert. According to the Air-Water Temperature Correlation model, the maximum water temperature in Dog Canyon Creek was predicted to exceed 29 degrees Celsius, which the model translates as attaining a warmwater or marginal warmwater aquatic life use.

However, the perennial reaches in this creek are localized and spring fed, somewhat shaded. So observed water temperatures are both -- at both monitoring locations were actually cooler than predicted by the model, indicating to us that a coolwater aquatic life use may be the most protective, naturally attainable use.

Finally, according to Oliver Lee Memorial State Park's management plan, the isolated perennial reaches of Dog Canyon Creek support a thriving riparian

and aquatic system of wildlife, birds, insects and amphibians but no fish.

The ecoregional settings, ambient air temperature, observed water temperatures and biological communities all indicate that a coolwater aquatic life use is the most protective, naturally attainable aquatic life use for Tecolote Creek from I-25 to Blue Creek and for the perennial portions of Dog Canyon Creek.

Q. And finally, Dr. Dail, what action is the Bureau asking the Commission to take here today?

A. The Department is asking the Water Quality Control Commission to adopt the changes to Tecolote Creek and Dog Canyon Creek as proposed.

MR. VERHEUL: I have no further questions for either witness, Madam Hearing Officer.

At this time, I would move for the admission of NMED Exhibits 1 through 13.

MS. ANDERSON: Okay. So admitted.

(Exhibits NMED 1 through 13 admitted into evidence.)

MR. VERHEUL: And these witnesses are available for cross-examination or questioning as a panel by the Commission.

MS. ANDERSON: And before I pass it over to the Commission, members of the public are entitled to

cross-examine any witnesses.

Does anybody in the public wish to ask questions of either the witness, Dr. Dail or Ms. Fullam?

This is your opportunity.

And any other members of the public who would like to make a comment on this?

I'm not seeing any hands.

Thank you.

Commission.

EXAMINATION

BY THE COMMISSION:

MR. DOMINGUEZ: Commissioners, questions for either of the two witnesses?

Commissioner Hutchinson, followed by Commissioner DeRose-Bamman.

MR. HUTCHINSON: At the risk of prolonging this, Mr. Chairman.

I guess this could be directed at either one of them.

I notice that on Dog Creek Canyon the Figure 4 and then on page 5 of your NOI the description of the inquiry on the points of diversion that came from the State Engineer's Office -- I note that -- that there's no metering information and actual withdrawal amounts are unknown.

I would assume that these are primarily referring to these that are indicated on Figure 4 in the upper right-hand side adjacent to the creek.

MS. FULLAM: Commissioner Hutchinson, let me see if I can answer that appropriately.

When we looked at the water rights at the Office of the State Engineer, there were diversions for water rights. They were primarily through stormwater events for irrigation and for livestock. They, to my knowledge, have never been utilized.

There are some other points of diversion in wells that are at the bottom of the canyon, and that's for Holloman Air Force Base. But again, to my knowledge, they are not metered, nor have they been utilized.

Does that answer your question?

MR. HUTCHINSON: And so these indications of points of diversions are like stock tanks, or they're not wells?

MS. FULLAM: They're not wells. On the upper portion of Dog Canyon, I do not believe they are wells. They are points of diversion during all stormwater events only because there are no perennial reaches on the upper portion of Dog Canyon Creek.

MR. HUTCHINSON: Okay.

Thank you, Mr. Chairman.

MR. DOMINGUEZ: Commissioner DeRose-Bamman.

MS. DEROSE-BAMMAN: Let's see. First of all, can you tell me why -- I know you can. Will you tell me why we're not waiting for the next triennial review to make changes to the standards for these UAAs?

MS. FULLAM: Commissioner DeRose-Bamman, as far as it pertains to Tecolote Creek, this particular stream segment has been impaired since -- I believe it's 1996. It's been identified as being impaired, and the US Environmental Protection Agency and the State of New Mexico entered into a settlement agreement in which we had 20 years in order to get this classified as a TMDL or find the right classification.

So at this point, we figured the correct designated use needed to be applied first, and then we can go through and do an assessment and determine the impairment and whether a TMDL still exists.

MS. DEROSE-BAMMAN: Okay. I figured it had something to do with a settlement agreement, but I didn't remember hearing that before. I saw -- I saw a brief reference to it in the initial for Tecolote Creek.

Okay. Thank you.

You mentioned that EPA -- Ms. Fullam, you mentioned that EPA did not give a technical approval.

During the last triennial review, it seemed to me that they did give technical approval for the UAAs prior to the hearing for the triennial review.

Did they give any indication why they chose not to do it for these two UAAs?

MS. FULLAM: Commissioner DeRose-Bamman, they did give technical approval for UAAs in the past; however, for whatever reason unbeknownst to us, it is not in our WQMPCPP, it is not required under our regulations under 20.6.4 NMAC, and therefore EPA has now taken a stance in which it is not a requirement, and therefore they will not act until they are given the rulemaking approval.

MS. DEROSE-BAMMAN: Because these UAAs, from my recollection, seem to -- they have a different approach than what was taken in the other UAAs, if I -- no? They're similar?

It seemed like with the air -- did you use this air-water model --

MR. DAIL: Correct. We --

MS. DEROSE-BAMMAN: Okay. With the 13 --

MR. DAIL: We used the Air-Water Temperature Correlation model -- I guess probably the earliest UAAs that you might be familiar with would be the Animas River and Mimbres Creek. Maybe there's some other early

ones where we began to use this model. And it was adopted in 2011 as an additional tool to find about what the most attainable conditions are.

The -- the Department's seeking EPA's technical approval of the UAA is somewhat concurrent to our process of presenting here, and we're sometimes unaware of whether or not that's going to come in in a timely fashion before we hold -- hold this meeting. But as Ms. Fullam indicated, not a requirement, certainly something that we will seek in the long run.

MS. DEROSE-BAMMAN: It's nice to have before we go through the effort of amending the rules, and then if they don't approve it, then you have to go back and do it again. But in any --

MR. DAIL: Understood.

MS. DEROSE-BAMMAN: I understand. We don't have it now.

And so -- thank you. That -- those are all the questions I have.

Thank you, Mr. Chair.

MR. DOMINGUEZ: Commissioner Tafoya.

MS. TAFOYA: Thank you, Mr. Chair.

So you gave some reasoning for the change with Tecolote Creek, and I'm wondering what the impetus for changing the Dog Canyon Creek is, what is the impetus

for this change.

MR. DAIL: Largely this is driven by surveys. So the -- the state is broken up into regional -- or watershed assessments, and the Department cycles through those in a survey process whereby we measure a lot of parameters in the stream, including chemical constituents and temperature in this case.

And generally the field personnel will make some assessments as to whether they feel like the existing standards are appropriate for these watersheds so they can -- they will fill out a form which indicates that perhaps the current aquatic life use or some other standard associated with the water body might be inappropriate and requires further investigation.

So that's what begins the process of making a further determination.

MS. TAFOYA: Thank you.

MS. ANDERSON: Commissioner DeRose-Bamman.

MS. DEROSE-BAMMAN: Thank you, Mr. Chair.

I apologize. I did have one other question.

In my copy of Tecolote Creek UAA, I don't have a Figure 4.

Did you provide that this morning?

It's between page 8 and 9, there's a large section of just blank paper.

MR. VERHEUL: Commissioner DeRose-Bamman, I believe it was Dog Canyon Creek UAA, Figure 4 that was referred to earlier, or you're saying yours is reproduced without a --

MS. DEROSE-BAMMAN: And I looked at the electronic version that I received, and I just don't have a -- for Tecolote.

This is Dog Canyon. I'm referring to Tecolote Creek UAA.

MR. VERHEUL: Commissioner DeRose-Bamman, apparently in reproduction you are correct. The figure is missing. The Department will resubmit the Tecolote Creek UAA with Figure 4.

I apologize.

MS. DEROSE-BAMMAN: Thank you.

Thank you.

MR. DAIL: If you're -- Commissioner DeRose-Bamman, that particular figure is to -- is to be illustrative of how the watershed is moving out of the mountainous region, into the more gradually open -- open riparian area below -- below Blue Creek.

MS. DEROSE-BAMMAN: Thank you. That's helpful for me, but everyone else. So thank you.

MR. DOMINGUEZ: A couple of -- one point to Commissioner DeRose-Bamman's question about doing this

now versus waiting for the next triennial review, from a timeliness standpoint, I would point out that triennial reviews is a little bit of a misnomer on the tri part. For us that have been involved with that, it's -- it stretches out. So anything that needs to be handled promptly, this would be probably the best approach to do that.

But your point is well taken, that it would fit in, but under these circumstances.

My second thing is more of a general -- and correct me as I go through this, but the coolwater classification has not always been available. That's something that was approved somewhat more in recent years. Previous to that we had coldwater and warmwater.

So as we're -- I think we've done a couple of other ones previously, moving to coolwater, and with these of moving to the coolwater category, this is just taking something that previously had those categories -- that category been available, they would have been designated that from the get-go.

We're not -- something monumental hasn't changed where all of a sudden it's, in essence -- and this is a little bit of a stretch, but probably the coldwater category wasn't exactly the right classification to begin with, but that was only -- that

was the best thing that we had to work with. But now that we have a coolwater classification, we've started to move these as these get done, and I assume we'll probably see more of these down the road.

Is that somewhat of a correct statement?

MR. DAIL: Chairman Dominguez, members of the Commission, yeah, that is -- is largely correct. A lot of the early designations were probably made prior to the Department's ability to put in continuously logging thermographs. So it was sort of a point-in-time measurement. And elevation probably took a much greater role in making the initial determinations on aquatic life uses.

And therefore, I would also add that as we became more sophisticated in our ability to monitor the water bodies, we also grew a sophistication of being able to properly identify them in terms of these classifications. And you are correct about the coolwater -- adoption of the coolwater. It's something that occurred later.

MR. DOMINGUEZ: Okay.

Any additional questions from the Commission?

Seeing none, Madam Hearing Officer, turn it back to you -- the floor to you.

MS. ANDERSON: Thank you.

Mr. Verheul, do you have anything else to add?

MR. VERHEUL: No, Madam Hearing Officer.

MS. ANDERSON: And so you're going to submit the new photo? Would a week be enough to keep the record open?

MR. VERHEUL: Absolutely. We will resubmit that with a notice of errata.

MS. ANDERSON: Okay. Thank you.

Chair.

MR. DOMINGUEZ: Okay. With that, the Commission has a couple of options.

We can move straight into deliberations, unless somebody views that they need some sort of posthearing submittals to make any sort of decision on.

So I see a lot of shaking of heads, no signs.

So with that, questions/comments from the Commission regarding deliberations?

So seeing no true deliberations, what's the pleasure of the Commission?

MR. WATERS: Mr. Chairman, I move that we accept the proposed amendments to the surface water quality standards for Dog Canyon Creek, Tecolote Creek, 20.6.4 NMAC, as presented to the Commission.

MR. DOMINGUEZ: Okay. We have a motion for approval.

Do we have a second?

MS. TAFOYA: I second.

MR. DOMINGUEZ: We have a second.

Any further discussion?

MR. HUTCHINSON: Mr. Chairman.

MR. DOMINGUEZ: Commissioner Hutchinson.

MR. HUTCHINSON: I would just like to enter into the record that the Department has provided a rather detailed analysis for the two stream segments, and I believe it contains sufficient information upon which to make approval.

MR. DOMINGUEZ: Okay. Thank you, Commissioner Hutchinson.

Any further discussion?

Seeing none, Pam, we'll move to a roll call vote.

MS. CASTANEDA: Larry Dominguez.

MR. DOMINGUEZ: Yes.

MS. CASTANEDA: Scott Dawson.

MR. DAWSON: Yes.

MS. CASTANEDA: Christy Tafoya.

MS. TAFOYA: Yes.

MS. CASTANEDA: Jane DeRose-Bamman.

MS. DEROSE-BAMMAN: Yes.

MS. CASTANEDA: Nelia Dunbar.

MS. DUNBAR: Yes.

MS. CASTANEDA: Howard Hutchinson.

MR. HUTCHINSON: Yes.

MS. CASTANEDA: John Waters.

MR. WATERS: Yes.

MS. CASTANEDA: Edward Vigil.

MR. VIGIL: Yes.

MS. CASTANEDA: Juan Borrego.

MR. BORREGO: Yes.

MS. CASTANEDA: Jacob Payne.

MR. PAYNE: Yes.

MS. CASTANEDA: Mr. Chair.

MR. DOMINGUEZ: Okay. Motion passes. We have approval.

Mr. Verheul, we notice that as Exhibit 9 you had a draft statement of reasons.

Just for mine and Commission counsel's clarification, is that one complete, or -- it's just a one-page there. Does that encompass everything you intended?

MR. VERHEUL: Yes, it does.

MR. DOMINGUEZ: Okay. If possible, this is an if possible, could you provide that in an electronic format, a Word format, to Commission counsel so that we can utilize that to draft along with our final order?

That would save us a little bit of time.

MR. VERHEUL: Absolutely, Mr. Chair.

MR. DOMINGUEZ: Okay. Thank you very much.

With that, that concludes this agenda item.

I believe this might be a good time -- thank you, Counsel and your two witnesses.

I think this might be a good time to take a 10-minute break.

(Proceedings adjourned at 10:39 a.m.)

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

I, CHERYL ARREGUIN, the officer before whom the foregoing proceeding was taken, do hereby certify that the witnesses whose testimony appears in the foregoing transcript were duly sworn or affirmed; that I personally recorded the testimony by machine shorthand; that said transcript is a true record of the testimony given by said witnesses; that I am neither attorney nor counsel for, nor related to or employed by any of the parties to the action in which this proceeding is taken, and that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

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