

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.

## 1           A P P E A R A N C E S

2   The Hearing Officer:

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4           Administrative Law Judge  
5           New Mexico Environment Department  
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For the Water Quality Control Commission:

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9           LARRY DOMINGUEZ, Chair  
10          HOWARD HUTCHINSON  
11          EDWARD VIGIL  
12          JOHN WATERS  
13          SCOTT DAWSON  
14          JANE DEROSE-BAMMAN  
15          JUAN-CARLOS "J.C." BORREGO  
16          CHRISTY TAFOYA  
17          NELIA DUNBAR  
18          JACOB PAYNE

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For the New Mexico Environment Department:

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1 MR. DOMINGUEZ: With that, we will move to  
2 action item number 6, which is WQCC 17-04(R), in the  
3 Matter of Proposed Amendments to Surface Water Quality  
4 Standards for Dog Canyon and Tecolote Creek, which is  
5 20.6.4 NMAC.

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

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

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

14 MR. VERHEUL: Good morning.

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

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

19 Excuse me.

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

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

25 MR. DOMINGUEZ: Actually, sorry to interrupt

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

5 Madam Hearing Officer, the floor is yours.

6 MS. ANDERSON: Thank you very much, Mr. Chair.  
7 Good morning, everyone.

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

11 So just some preliminaries before we get  
12 started.

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

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

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

25 I'm not seeing any show of hands.

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

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

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

13           MR. VERHEUL: Good morning, Madam Hearing  
14 Officer.

15           John Verheul on behalf of New Mexico  
16 Environment Department.

17           MS. ANDERSON: Good morning.

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

20           MS. ANDERSON: Morning.

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

23           MS. ANDERSON: Good morning.

24           (Jennifer Fullam and Bryan Dail were duly  
25 sworn.)

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

3 MR. VERHEUL: An extremely brief opening  
4 statement --

5 MS. ANDERSON: Okay.

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

7 MS. ANDERSON: Sure, yeah.

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

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

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

23 MS. ANDERSON: Sure.

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



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

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

10 MS. ANDERSON: Thank you.

11 MR. VERHEUL: Okay.

12 The Environment Department calls Ms. Jennifer  
13 Fullam.

14 JENNIFER FULLAM and BRYAN DAIL

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

17 DIRECT EXAMINATION OF JENNIFER FULLAM

18 BY MR. VERHEUL:

19 Q. Please state your name.

20 A. Jennifer Fullam.

21 Q. And what is your current position?

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

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

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

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

11 A. Yes. My prefiled testimony is Exhibit 2.

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

14 A. No.

15 Q. Do you adopt that testimony here today?

16 A. Yes.

17 Q. What is the nature of that testimony?

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

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

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

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

9           Q.     And what were the results of these UAAs?

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

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

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

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

25          Q.     And what water quality criteria would change

1 if the designated aquatic life use is changed to  
2 coolwater?

3       A.     So the proposed change for Dog Canyon Creek  
4 from coldwater to coolwater aquatic life use would  
5 change the maximum allowable temperature from 24 degrees  
6 to 29 degrees Celsius, it would remove the 6T3  
7 temperature criterion of 20 degrees Celsius, it would  
8 expand the upper range of pH from 8.8 to 9, and it would  
9 also lower the acceptable minimum dissolved oxygen  
10 concentration from 6 milligrams per liter to  
11 5 milligrams per liter.

12             The proposed change from a high-quality  
13 coldwater aquatic life use to a coolwater aquatic life  
14 use for Tecolote Creek from I-25 to Blue Creek would  
15 increase the maximum allowable temperature from 23  
16 degrees Celsius to 29 degrees Celsius, expand the  
17 acceptable upper range for pH from 8.8 to 9, and lower  
18 the acceptable -- acceptable minimum dissolved oxygen  
19 concentrations from 6 milligrams per liter to  
20 5 milligrams per liter.

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

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

3 Could you summarize these changes?

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

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

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

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

25 A. In accordance with the Bureau's Water Quality

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

6           After drafting the UAAs, the Bureau solicited  
7 public comment from September 1st, 2017, to October 2nd,  
8 2017, and the notice of comment period was published in  
9 four newspapers in both English and Spanish. We  
10 distributed it -- the notice to 1,514 recipients on the  
11 Surface Water Quality Bureau's E-mail recipient list,  
12 and we posted the notice on the Bureau's website.

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

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

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

25           A. So the Department forwarded the UAAs to EPA

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

8 MR. VERHEUL: Thank you, Ms. Fullam.

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

13 MS. ANDERSON: That's fine. Sure.

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

16 DIRECT EXAMINATION OF BRYAN DAIL

17 BY MR. VERHEUL:

18 Q. Dr. Dail, please state your name.

19 A. Bryan Dail.

20 Q. Talk directly in the mike.

21 A. Will do.

22 MS. FULLAM: Really close.

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

25 A. My current position is environmental scientist

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

3 Q. Please summarize your education and your  
4 relevant experience.

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

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

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

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

13 A. I did. My prefilled testimony is New Mexico  
14 Environment Department Exhibit Number 4.

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

17 A. No, I do not.

18 Q. And do you adopt that testimony here today?

19 A. Yes.

20 Q. What is the nature of your testimony?

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



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

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

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

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

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

25 Turning to Dog Creek, this watershed may be

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

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

15           Currently, Tecolote Creek from I-25 to Blue  
16 Creek is classified in water quality standards segment  
17 215 with a designated high-quality coldwater aquatic  
18 life use, and perennial portions of Dog Canyon Creek are  
19 classified under segment 801 with a designated coldwater  
20 aquatic life use.

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

1 Dog Canyon Creek.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18           MS. ANDERSON:  Okay.  So admitted.

19           (Exhibits NMED 1 through 13 admitted into  
20 evidence.)

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

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

1 cross-examine any witnesses.

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

4 This is your opportunity.

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

7 I'm not seeing any hands.

8 Thank you.

9 Commission.

10 EXAMINATION

11 BY THE COMMISSION:

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

14 Commissioner Hutchinson, followed by  
15 Commissioner DeRose-Bamman.

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

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

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

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

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

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

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

16 Does that answer your question?

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

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

25 MR. HUTCHINSON: Okay.



1 Thank you, Mr. Chairman.

2 MR. DOMINGUEZ: Commissioner DeRose-Bamman.

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

7 MS. FULLAM: Commissioner DeRose-Bamman, as  
8 far as it pertains to Tecolote Creek, this particular  
9 stream segment has been impaired since -- I believe it's  
10 1996. It's been identified as being impaired, and the  
11 US Environmental Protection Agency and the State of New  
12 Mexico entered into a settlement agreement in which we  
13 had 20 years in order to get this classified as a TMDL  
14 or find the right classification.

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

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

23 Okay. Thank you.

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

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

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

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

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

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

20           MR. DAIL: Correct. We --

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

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

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

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

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

15 MR. DAIL: Understood.

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

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

20 Thank you, Mr. Chair.

21 MR. DOMINGUEZ: Commissioner Tafoya.

22 MS. TAFOYA: Thank you, Mr. Chair.

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

1 for this change.

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

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

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

17 MS. TAFOYA: Thank you.

18 MS. ANDERSON: Commissioner DeRose-Bamman.

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

20 I apologize. I did have one other question.

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

23 Did you provide that this morning?

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

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

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

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

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

14 I apologize.

15 MS. DEROSE-BAMMAN: Thank you.

16 Thank you.

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

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

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

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

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

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

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

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

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

5 Is that somewhat of a correct statement?

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

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

21 MR. DOMINGUEZ: Okay.

22 Any additional questions from the Commission?

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

25 MS. ANDERSON: Thank you.

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

2 MR. VERHEUL: No, Madam Hearing Officer.

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

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

8 MS. ANDERSON: Okay. Thank you.  
9 Chair.

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

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

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

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

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

20 MR. WATERS: Mr. Chairman, I move that we  
21 accept the proposed amendments to the surface water  
22 quality standards for Dog Canyon Creek, Tecolote Creek,  
23 20.6.4 NMAC, as presented to the Commission.

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



1 Do we have a second?

2 MS. TAFOYA: I second.

3 MR. DOMINGUEZ: We have a second.

4 Any further discussion?

5 MR. HUTCHINSON: Mr. Chairman.

6 MR. DOMINGUEZ: Commissioner Hutchinson.

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

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

14 Any further discussion?

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

17 MS. CASTANEDA: Larry Dominguez.

18 MR. DOMINGUEZ: Yes.

19 MS. CASTANEDA: Scott Dawson.

20 MR. DAWSON: Yes.

21 MS. CASTANEDA: Christy Tafoya.

22 MS. TAFOYA: Yes.

23 MS. CASTANEDA: Jane DeRose-Bamman.

24 MS. DEROSE-BAMMAN: Yes.

25 MS. CASTANEDA: Nelia Dunbar.

1 MS. DUNBAR: Yes.

2 MS. CASTANEDA: Howard Hutchinson.

3 MR. HUTCHINSON: Yes.

4 MS. CASTANEDA: John Waters.

5 MR. WATERS: Yes.

6 MS. CASTANEDA: Edward Vigil.

7 MR. VIGIL: Yes.

8 MS. CASTANEDA: Juan Borrego.

9 MR. BORREGO: Yes.

10 MS. CASTANEDA: Jacob Payne.

11 MR. PAYNE: Yes.

12 MS. CASTANEDA: Mr. Chair.

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

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

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

21 MR. VERHEUL: Yes, it does.

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

1           That would save us a little bit of time.

2           MR. VERHEUL: Absolutely, Mr. Chair.

3           MR. DOMINGUEZ: Okay. Thank you very much.

4           With that, that concludes this agenda item.

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

7           I think this might be a good time to take a  
8 10-minute break.

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

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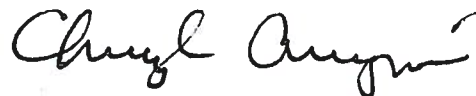
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1 STATE OF NEW MEXICO )  
2 ) ss.  
3 COUNTY OF BERNALILLO )  
4  
5

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

18 

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