

**STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION**



**IN THE MATTER OF:
PROPOSED AMENDMENTS TO
SURFACE WATER QUALITY STANDARDS FOR
NICHOLS AND McCLURE RESERVOIRS,
THE SANTA FE RIVER AND
THE GALISTEO WATERSHED**

WQCC 12-07 (R)

ORDER AND STATEMENT OF REASONS FOR AMENDMENT OF STANDARDS

THIS MATTER comes before the New Mexico Water Quality Control Commission (the “Commission” or “WQCC”) upon a petition filed by the New Mexico Environment Department (“NMED” or “Petitioner”) pursuant to the Water Quality Act, NMSA 1978, Sections 74-6-1 to -17 (the “WQA”), wherein certain amendments to surface water quality standards were proposed. In advance of the hearing in this matter, NMED disseminated information and solicited input from interested persons via multiple public meetings and through a public comment period. The Commission held a public hearing on December 11, 2012, and deliberated at a public meeting immediately thereafter. The Commission heard and considered technical testimony and exhibits from NMED, and heard and considered testimony from the public. At the conclusion of deliberations, the Commission voted to adopt NMED’s Revised Proposed Amendments as described in this Order and Statement of Reasons.

PROCEDURAL HISTORY

1. On August 3, 2012, the NMED filed a Petition for Hearing (the “Petition”) wherein NMED petitioned the Commission to amend certain surface water quality standards.

2. On August 14, 2012, at its regular public meeting, the Commission set the matter for a public hearing to be held at the Commission's December 2012 regular public meeting. Ms. Felicia Orth was appointed Hearing Officer in this matter.

3. In advance of the hearing in this matter, NMED conducted myriad public outreach efforts to disseminate information regarding its proposals and to solicit input from interested members of the public. To wit:

- a. A public meeting was held at La Cienega Community Center in Santa Fe, New Mexico on May 23, 2012, and at the Santa Fe Main Library on May 29, 2012, to discuss the portion of the Petition related to the Santa Fe River. [Testimony of Hogan, Tr. 21-22; NMED Exhs. 4 & 7].
- b. NMED met with the Santa Fe City staff on three occasions, two times with the Santa Fe City River Commission, and once with the Santa Fe Public Utilities Commission. [NMED Exh. 4].
- c. On August 21, 2012, NMED released discussion drafts of the Santa Fe River Use Attainability Analysis ("UAA") and standards proposal and provided a 30-day comment period. [Testimony of Hogan, Tr. 21; Exhs. 4 & 9].
- d. A public meeting was held at the Hondo Fire Station 2 north of Eldorado, New Mexico on October 10, 2010, and August 8, 2012, to discuss the Galisteo Watershed proposal. [Testimony of Hogan, Tr. 21; Exhs. 4 & 8].
- e. On July 27, 2012 NMED released discussion drafts of the Galisteo Watershed UAA and standards proposal and opened a 30-day comment period. [Testimony of Hogan, Tr. 21; Exhs 4, 10 & 12].

4. Notice of the public meetings in Santa Fe and Eldorado and the release of the discussion drafts was sent to the NMED's Surface Water Quality Bureau's ("SWQB") e-mail distribution list, posted on the SWQB's website and distributed to media outlets via press releases. [Testimony of Hogan, Tr. 21; Exhs. 4, 9 & 10].

5. Based on public comment and additional data received since the release of the discussion drafts, NMED made changes to the regulatory change set forth in the Petition as embodied in NMED's Revised Proposed Amendments (attached hereto as "**Attachment A**"). [Testimony of Hogan, Tr. 22; Exhs. 3, 4, 11 & 12].

6. A procedural order was issued by the WQCC Hearing officer on October 1, 2012.

7. On November 19, 2012, NMED filed a Notice of Intent to Present Technical Testimony at the December hearing. No other Notices of Intent were filed with the Commission in this matter.

8. On December 11, 2012, the Commission held a public hearing in this matter at the New Mexico State Capitol Building, Room 307, in Santa Fe. The hearing was recorded by Commission personnel and transcribed by a court reporter. Legal notice of the hearing was published in the New Mexico Register on October 16, 2012, and public notice of the hearing was published on October 26, 2012, in two newspapers of general circulation in the state (the Santa Fe New Mexican and the Albuquerque Journal) that also cover the areas affected by the proposals. [Exhs. 4 & 13]. Notice of the hearing was also sent to the WQCC's mailing list and the SWQB's mailing list. [Exh. 4]. Notice was also published on the SWQB's website. [Exhs. 4 & 14].

9. NMED presented direct testimony from three witnesses in support of the petition: Dr. James Hogan, acting bureau chief of SWQB, Tim Michael, an environmental scientist with SWQB, and Deborah Sarabia, also an environmental scientist with SWQB. NMED made these three

witnesses available for cross-examination and questions from the Commission. NMED also submitted written exhibits (referenced herein as “Exh(s).”) in support of NMED’s petition.

10. Non-technical testimony was received from members of the public. Alex Puglisi, environmental compliance manager for the City of Santa Fe [Tr. 85-88], and Felicity Broennan, a representative of the Santa Fe Watershed Association [Tr. 89-90], testified in support of NMED’s petition. Rachel Conn also provided testimony regarding the petition and was questioned by the Commission. [Tr. 90-94]. All three public witnesses were available to the Commission for cross examination.

11. Following the public hearing, on December 11, 2012, at a public meeting, the Commission held deliberations in this matter. [Tr. 94-111]. At the conclusion of deliberations, and by a vote of eight (8) in the affirmative and five (5) in the negative, the Commission voted to adopt NMED’s Revised Proposed Amendments. [Tr. 112-113].

LEGAL AUTHORITY

1. Under NMSA 1978, Section 74-6-4(D), the Commission is authorized to adopt water quality standards for surface and ground waters in New Mexico. Under Section 74-6-6(B), any person may petition the WQCC to adopt, amend or repeal a water quality standard. The WQCC must hold a public hearing in order to adopt new or amended standards. NMSA 1978, § 74-6-6(A).

2. New Mexico’s water quality standards are set forth at 20.6.4 NMAC (the “**Standards**”). Standards adopted by the WQCC shall include narrative standards and, as appropriate, the designated uses of the waters and the water quality criteria necessary to protect such uses. NMSA 1978, § 74-6-4(D).

3. As set forth in Section 74-6-3(E), the WQCC is the state water pollution control agency for New Mexico for all purposes of the federal clean water act (the “**CWA**”), 33

U.S.C. 1251 to -1387. The CWA requires that state water quality standards “protect public health or welfare, enhance the quality of water and serve the purposes of the [CWA].” 33 U.S.C. § 1313 (c)(2); 40 CFR § 131.2. The CWA further provides that “[s]uch standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, [including]...for navigation.” *Id.* A water quality standard “defines the goals for a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria necessary to protect the uses.” 40 CFR 131.2; 20.6.4.6 NMAC. The designated uses in the Standards, as set forth and defined in 20.6.4.7 NMAC, are domestic water supply, livestock watering, irrigation, aquatic life (coldwater, coolwater, warmwater and four other subcategories), primary and secondary contact, fish culture, wildlife habitat, and public water supply.

4. Under the CWA, the criteria contained in water quality standards must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use. 40 CFR § 131.11(a). The Standards contain narrative criteria that apply to all designated uses. 20.6.4.13 NMAC. The Standards also identify numeric criteria that are specific to particular designated uses 20.6.4.900 NMAC.

5. The Standards and the CWA prohibit the removal of designated uses if they are “existing uses.” 20.6.4.15(A)(2) NMAC; 40 CFR § 131.10(h). An existing use is “a use actually attained in a surface water of the state on or after November 28, 1975, whether or not it is a designated use.” 20.6.4.7(E)(3) NMAC.

6. The Standards mandate protection of existing uses. The general and use-specific criteria apply to existing uses, see 20.6.4.13 & 20.6.4.900 NMAC, and the antidegradation policy contained in the Standards requires that the level of water quality necessary to protect existing uses

must be maintained. See 20.6.4.8.A(1) NMAC. Under the CWA, “[w]here existing water quality standards specify designated uses less than those which are presently being used, the [s]tate shall revise its standards to reflect the uses actually being attained.” 40 CFR § 131.10(i). Thus, the establishment of criteria less stringent than those normally associated with a particular designated use should be sufficient to protect that use.

7. The Standards and the CWA prohibit the removal of a designated use specified in CWA Section 101(a)(2) unless a UAA demonstrates that attaining the use is not feasible. 20.6.4.15(A)(1) NMAC; 40 CFR § 131.10(g), (j). “A [UAA] is a scientific study conducted for the purpose of assessing the factors affecting the attainment of a use.” 20.6.4.15(A) NMAC. CWA Section 101(a)(2) establishes as a national goal the achievement of a level of water quality that “provides for the protection and propagation of fish, shellfish and wildlife, and provides for recreation in and on the water,” also referred to as the “fishable/swimmable” standard. The corresponding designated uses in New Mexico are the primary contact use, the wildlife habitat use, and all aquatic life use subcategories except the limited aquatic life use.

9. Per Section 74-6-4(D), the adoption of water quality standards by the Commission shall be “based on credible scientific data and other evidence appropriate under the Water Quality Act.” At a minimum, the standards shall “protect the public health or welfare, enhance the quality of water and serve the purposes of the Water Quality Act.” NMSA 1978, ¶ 74-6-4(D).

10. In making water quality standards, the Commission shall give weight it deems appropriate to all facts and circumstances, including “the use and value of the water for water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial and other purposes.” Id; see generally New Mexico Mining Ass'n v. New Mexico Water Quality Control Comm'n, 2007-NMCA-10, ¶¶ 13-21, 141 N.M. 41, 46-49 (delineating the criteria applicable to the adoption of water quality standards).

11. Among other things, the Commission's decision to adopt a standard must be based upon substantial evidence and take into account the record as a whole. See New Mexico Mining Ass'n, 2007-NMCA-10, ¶ 34, 141 N.M at 30, 34.

SUMMARY OF PROPOSED AMENDMENTS

Santa Fe River Proposals

1. NMED proposes amendments to Surface Water Quality Standards for Nichols and McClure Reservoirs and the Santa Fe River, specifically, to (A) create a new segment for Nichols and McClure Reservoirs; (B) create a new segment for the Santa Fe River from Guadalupe Street to Nichols Reservoir; (C) create a new segment for the Santa Fe River from the wastewater treatment facility to Guadalupe Street; and (D) update designated uses for the Santa Fe River from Cochiti Pueblo to the wastewater treatment facility.

2. The first proposal creates a new classified segment for Nichols and McClure Reservoirs. [Exh. 3, 15 & 17]. The reservoirs are currently classified in Segment 121 along with 17 streams in Santa Fe and Sandoval counties. [Exh. 15]. The proposal removes the reservoirs from the stream segment and places them in a separate new classified segment, proposed to be codified at 20.6.4.138 NMAC (“**Segment 138**”). [Id.]. The proposed new segment retains the designated uses of high quality coldwater aquatic life, wildlife habitat, primary contact, irrigation and public water supply from Segment 121. [Exh. 3 & 15]. It also retains the segment-specific *E. coli* bacteria and specific conductance criteria associated with the primary contact and high quality coldwater uses. [Id.]. It does not retain the domestic water supply and livestock watering uses. [Id.].

3. The second proposal creates a new classified segment, proposed to be codified at 20.6.4.137 NMAC (“**Segment 137**”), for the Santa Fe River from Guadalupe Street to Nichols

Reservoir. [Exh. 3 & 17]. This reach is currently an unclassified intermittent water covered by Section 20.6.4.98 NMAC. [Exh. 15]. The proposed designated uses for new Segment 137 are coolwater aquatic life, wildlife habitat, primary contact, livestock watering and irrigation. [Exhs. 3 & 15].

4. The third proposal creates a new classified segment, proposed to be codified at 20.6.4.136 (“**Segment 136**”) for the Santa Fe River from the City of Santa Fe wastewater treatment facility to Guadalupe Street. [Exhs. 3, 15 & 17]. This reach is currently an unclassified intermittent water covered by Section 20.6.4.98 NMAC of the Standards. [Id.]. The proposed designated uses for the new Segment 136 are limited aquatic life, wildlife habitat, primary contact, livestock watering and irrigation. [Id.].

5. The next proposal updates uses and criteria for the segment codified at 20.6.4.113 NMAC (“**Segment 113**”), the Santa Fe River from Cochiti Pueblo to the City of Santa Fe wastewater treatment facility. [Exhs. 3, 15 & 17]. The proposal changes (1) the aquatic life uses from marginal coldwater and warmwater to coolwater, and (2) the contact use from secondary contact to primary contact. [Id.].

Galisteo Watershed Proposal

6. NMED proposes amendments to Standards for surface waters in the Galisteo Basin, specifically, that (A) retain the high quality coldwater aquatic life uses and criteria in the headwaters for the segment codified at 20.6.4.121 NMAC (“**Segment 121**”); (B) create a new segment for perennial reaches of Galisteo Creek and perennial reaches of its tributaries downstream of Cañoncito, proposed to be codified at 20.6.4.139 NMAC (“**Segment 139**”); (C) assign the coolwater aquatic life use to Segment 139; and (D) remove Cerrillos Reservoir from Segment 121 and reclassify the reservoir and its public water supply in Segment 139. [Exhs. 3 & 20]. NMED’s

proposal excludes all non-perennial reaches within the watershed and all waters on the Kewa Pueblo. [Exh. 20].

STATEMENT OF REASONS

The WQCC hereby makes the following findings:

Santa Fe River Proposals

Segment 138: New Classified Segment for Nichols and McClure Reservoirs

1. The evidence adduced at hearing supports NMED's proposal to remove the designated uses of domestic water supply and livestock watering. The Santa Fe River watershed above Nichols Reservoir has been closed to public access since 1932 via the Santa Fe Watershed Closing Order issued by the Secretary of the Department of Agriculture. [Exhs. 15 & 19]. The Closing Order broadly prohibits human occupancy. Because of the access restrictions to the watershed, the uses of domestic water supply and livestock watering are not attainable, and have been properly removed from Segment 138. [Testimony of Michael, Tr. 26, 44-47; Exhs. 15 & 19].

2. As established by the evidence presented at the hearing, the proposal for Segment 138 properly retains the primary contact use and associated criteria because (1) the reservoirs are used for public water supply and (2) the primary contact use is consistent with the "swimmable" goal of the CWA and the WQA. See supra p.6, ¶ 7; [Exh. 15]. For the primary contact use, the only criteria are for concentrations of *E. coli* bacteria. 20.6.4.900(D) NMAC. [Exh. 15]. The public water supply use does not have numeric criteria that apply uniquely to the use; however, "water quality ... is ensured by the general criteria and numeric criteria for bacterial quality, pH and temperature." 20.6.4.900(A) NMAC; [Id.]. The proposal retains the current segment-specific *E. coli* criteria of monthly geometric mean of 126 cfu/100 ml and single sample of 235 cfu/100 ml, which are the most stringent *E. coli* criteria in New Mexico. [Id.]. These *E. coli* criteria are

currently being met, and it is appropriate to retain the criteria to protect the public water supply use. [Id.]. The proposal also retains the segment-specific specific conductance criterion of 300 $\mu\text{S}/\text{cm}$ to protect the high quality cold water aquatic life use. 20.6.4.900(H)(1); [Id.].

3. The WQCC finds that the foregoing constitutes substantial, credible evidence that the reclassification of the McClure and Nichols Reservoirs as Segment 138 and the standards proposed for that segment are consistent with the purposes of the WQA. Namely, the expert witnesses presented uncontroverted testimony and documentary evidence regarding the appropriateness of removing the domestic water supply and livestock watering uses from the enumeration of designated uses applicable to the segment. Because such uses are not possible given the long-standing prohibition on certain conduct within the Santa Fe Watershed area, those uses are not attainable and removal thereof reflects a proper enumeration of designated uses for the new Segment 138. In addition, the standards set forth in NMED's proposal for Segment 138 evince a high-level of protection for the surface water that coincides with and supports the uses of that segment, thereby safeguarding the public welfare and serving the purposes of the WQA.

Segment 137: New Classified Segment for the Santa Fe River from Guadalupe Street to Nichols Reservoir

4. The classification of the Santa Fe River from the Nichols Reservoir to Guadalupe Street into a new segment is consistent with the purposes of the WQA given the evidence presented at the hearing. The NMED elected to review the existing classification of this segment due to the February 2012 decision by the Santa Fe City Council which formalized the City's commitment to provide up to 1,000 acre feet per year to the Santa Fe River in an effort to approximate normal seasonal streamflow patterns through much of this reach, depending on runoff available in the Santa Fe Watershed. [Testimony of Michael, Tr. 27-28; Exhs. 15 & 17]. Changes to flow patterns

warrant such a review of the current segment classification scheme and support the proposal to create Segment 137.

5. The UAA conducted by NMED and testimony adduced at the hearing provide substantial scientific and qualitative evidence in support of the coolwater aquatic life use being included in the Standards for Segment 137. [Testimony of Michael, Tr. 27-28; Exh. 17]. In particular, the UAA supports the conclusion that the combination of streamflow pattern and water temperature supports the coolwater aquatic life use, which is for waters where “the water temperature and other characteristics are suitable for the support or propagation of aquatic life whose physiological tolerances are intermediate between and may overlap those of warm and coldwater aquatic life.” 20.6.4.7(C)(5); [Id]. The climate in the vicinity of the segment results in water temperatures that are consistent with the coolwater use. [Testimony of Michael, Tr. 27-28]. There are no well-documented fish collection records for this portion of the river. At downstream locations, that is, downstream of the wastewater treatment facility in the Santa Fe River or at the Rio Grande/Santa Fe River confluence, *Catostomus (Pantosteus) plebeius* (Rio Grande sucker) and *Pimephales promelas* (fathead minnow) were collected in 1958, 1988, 1990, 1993, 2000 and 2009. [Testimony of Michael, Tr. 27-28; Exhs. 15 & 17]. These species are consistent with a coolwater aquatic life use. Collection information is tabulated in Table A3 of the UAA [Exh. 17]. In addition to the coolwater aquatic life use, the new segment is assigned the existing uses of wildlife habitat, livestock watering and irrigation. [Testimony of Michael, Tr. 28; Exhs. 3 & 15].

6. A more stringent primary contact use standard is proposed for Segment 137, thereby enhancing the protections for an existing “swimmable” use. Under 20.6.4.98 NMAC, which presently governs the segment, the criteria of *E. coli* monthly geometric mean value of 206 cfu/100 ml and single sample value of 940 cfu/100 ml currently applies to the unclassified reach.

[Testimony of Michael, 28-29; Exhs. 3 & 15]. The default primary contact use is proposed for Segment 137, as set forth at 20.6.4.900(D) NMAC, with criteria of *E. coli* monthly geometric mean value of 126 cfu/100 ml and single sample value of 410 cfu/100 ml. [Exhs. 3 & 15]. This reach of the river is used for primary contact, and the use is expected to continue to be both an attainable and an existing use, particularly considering the planned releases by the City of Santa Fe.

[Testimony of Michael, 28-29]. The reach is presently listed in the 303(d)/305(b) Integrated List for *E. coli* exceedances. [Exh. 15]. Due to all of the foregoing, the modification of the primary contact standard for Segment 137 conforms to the changes in flow for the segment, enhances protections for the public health, and promotes the public welfare by applying more stringent *E. coli* standards.

7. The WQCC finds that the creation of Segment 137 and the Standards proposed therefor constitute an appropriate change in policy to reflect changes in flow and the universe of attainable and existing uses in the reach. The proposed standards, including the coolwater aquatic life use, were supported by substantial, credible, uncontroverted scientific and other evidence, as detailed above. The change in Standards applicable to the primary contact use designation imposes more stringent *E. coli* standards, thereby enhancing protections in furtherance of the “swimmable” objective and safeguarding public health. In sum, the changes proposed for Segment 137 are squarely in accord with the purposes of the WQA.

Segment 136: New Classified Segment for the Santa Fe River from the Wastewater Treatment Facility Outfall to Guadalupe Street

8. The UAA and the evidence presented at hearing confirm that the highest attainable aquatic life use in the new classified segment is limited aquatic life. The UAA makes clear that aquatic life use is limited by the lack of water in this segment. [Testimony of Michael, Tr. 29; Exhs. 5 & 17.]

9. As evidenced by the UAA, when water is present, this reach of the river has been used for primary contact, and this use is expected to continue as both attainable and existing, requiring a standard that properly protects and supports such contact. [Id.]. Therefore, the proposed contact use is primary contact, with the default primary contact criteria of *E. coli* monthly geometric mean value of 126 cfu/100 ml and single sample value of 410 cfu/100 ml. 20.6.4.900(D) NMAC. [Id.; Exh. 3]. As with Segment 137, this is a change from the less stringent criteria, *E. coli* monthly geometric mean value of 206 cfu/100 ml and single sample value of 940 cfu/100 ml that applied to the previously unclassified reach. [Exh. 15 & 17]. The reach is presently listed in the 303(d)/305(b) Integrated List for *E. coli* exceedances. [Exh 15].

10. Based on the foregoing, and the sum of the evidence presented at hearing, the WQCC finds that substantial evidence was presented in support of creating Segment 137 and applying the standards proposed by NMED. The UAA and related testimony provide an uncontroverted scientific basis to conclude that the limited aquatic life use is an appropriate designation for this segment. The proposed change to default primary contact criteria represents an improvement in protection consistent with the “swimmable” objective of the CWA, thereby enhancing protections consistent with the furtherance of public health.

Segment 113: Update Designated Uses and Criteria for the Santa Fe River from Cochiti Pueblo to the Santa Fe Wastewater Treatment Facility

11. Based on the UAA and other evidence presented at the hearing, it is proper to add the coolwater aquatic life use designation to the Standards for this segment and remove the marginal coldwater and warmwater aquatic life uses. Segment 113 is located in Level IV Ecoregion 22h. [Exhs. 15 & 17]. According to ecoregion maps, the July average air temperature is 22°C. [Id.]. Based on the relationship of air temperature to water temperature, the water temperature is predicted to be in the coolwater range (less than 29°C) although it may approach the current

segment-specific temperature criterion of 30°C. See 20.6.4.900(H) NMAC (setting forth temperature and other criteria for various aquatic life designations); [Id.]. As indicated supra in the section regarding Segment 137, *Catostomus (Pantosteus) plebeius* (Rio Grande sucker) and *Pimephales promelas* (fathead minnow) were collected in 1958, 1988, 1990, 1993, 2000 and 2009 at locations downstream of the wastewater treatment facility in the Santa Fe River or at the Rio Grande/ Santa Fe River confluence. [Exhs. 15 & 17]. None of these are coldwater fish. [Id.]. Collection information is tabulated in Table A3 of the UAA. [Id.].

12. Therefore, based on the naturally-occurring water temperature and the fish collection records, the coolwater aquatic life use matches the attainable aquatic life use better than the current uses of marginal coldwater and warmwater. [Id.]. However, based on the data and other evidence, while the aquatic life use would change from marginal coldwater and warmwater to coolwater, the current 30°C segment specific temperature criterion would be retained. See 20.6.4.900(H) NMAC [Exhs. 3, 15 & 17]. The 30°C criterion is higher than the 29°C maximum temperature criterion that is normally associated with the proposed coolwater aquatic life use. See Id. However, the Commission finds that substantial evidence was provided that the existing criterion is sufficient to protect the coolwater use. [Exhs. 15 & 17]. The change to the coolwater use raises the instantaneous dissolved oxygen (“**DO**”) criterion from 4 to 5 mg/L. [Id.]. At times, the DO concentration falls below the 5 mg/L criterion for this segment. [Id.] However, low concentrations of DO are a response to high levels of nutrients for which the stream is presently considered impaired on the State 303(d)/305(b) Integrated List. [Exh. 15]. Therefore, based on extensive scientific data, the change to coolwater aquatic life is the best practice and coincides with the purposes of the WQA.

13. The proposal to change the contact criteria from the current secondary contact use criteria to the more stringent primary contact use criteria will further the purposes of the WQA and the CWA by enhancing protections in accord with an attainable “swimmable” use. Through this change, the secondary contact criteria of *E. coli* monthly geometric mean value of 548 cfu/100 ml and single sample value of 2507 ml/100 cfu will be replaced with the more stringent primary contact criteria of monthly geometric mean value of 126 cfu/100 ml 10 and single sample value of 410 ml/100 cfu. Compare 20.6.4.900(D) NMAC, with 20.6.4.900(E) NMAC. Federal regulations, as set forth at 40 CFR 131.20(a), require that if a “fishable/swimmable” use is attainable (in this case, primary contact), then the State shall revise its standards accordingly, and this constitutes such a revision. [Exh. 15]. Available data indicate that in the stream, the frequency of exceedance of these criteria is insufficient to place the stream on the State 303(d)/305(b) Integrated List. [Id.]. Also, records indicate that the wastewater treatment facility can meet these criteria. [Id.].

14. In light of the foregoing, the WQCC finds that the NMED’s proposals for the Santa Fe River from Cochiti Pueblo to the City of Santa Fe wastewater treatment facility, are supported by substantial evidence and conform to the purposes of the WQA and the CWA.

Galisteo Watershed Proposal

15. The Galisteo Creek watershed covers 730 square miles and is located east of the Rio Grande in north-central New Mexico, in the Upper Rio Grande basin. Headwater streams originate at elevations over 8,500 feet and join Galisteo Creek at Cañoncito at an elevation of 6,800 feet. [Testimony of Sarabia, Tr. 33-34; Exhs. 20 & 22]. From this point streams are lower gradient. Galisteo Creek enters the Rio Grande at an elevation of 5,180 feet. The total length of Galisteo Creek is 53 miles. The last 10 miles above its confluence with the Rio Grande are located within the boundaries of Kewa (Santo Domingo) pueblo. The watershed may be informally divided into

lower, middle and upper sections. The lower section includes the Rio Grande confluence upstream to Cerrillos. The middle section includes County Road 55A, Galisteo and Lamy. The upper watershed includes Cañoncito, Apache Canyon and Deer Creek. Stream flows of the mainstem and tributaries vary throughout the watershed and may be perennial, intermittent or ephemeral. The perennial reaches are currently classified in 20.6.4.121 NMAC.

Segment 121

16. The UAA for the Galisteo Watershed demonstrates, based on predicted and measured water temperatures, that the high quality coldwater aquatic life use is attainable in Segment 121 and should be retained as a use in the Standard for this segment. [Testimony of Sarabia, Tr. 36; Exhs. 20 & 22]. The area between Cañoncito and Lamy is a transition between the middle and upper watershed where different types of geology, soils, vegetation and topography converge. [Testimony of Sarabia, Tr. 34-37; Exhs. 20 & 22]. Water temperatures in this region currently exceed the criterion for the current high quality coldwater aquatic life use, but this use may be attainable especially in pools and with further restoration and implementation of best management practices. [Id.]. Therefore, the WQCC finds that a change in classification is not warranted.

New Segment 139

17. In the middle and lower watershed, the UAA demonstrates, based on predicted and measured water temperatures, that naturally occurring (higher) ambient temperatures prevent the attainment of the high quality coldwater aquatic life use and should be reclassified into a new segment 139 with coolwater as the highest attainable aquatic life use. See 20.6.4.900(H) NMAC; [Id.; Exh. 3]. NMED also proposes to remove Cerrillos Reservoir and its public water supply designated use from segment 121, and reclassify the reservoir and its public water supply use in proposed segment 139. [Testimony of Sarabia, Tr. 34-35; Exhs. 3, 20 & 22]. The specific

conductance criteria in segment 121 apply only to the high quality coldwater aquatic life use and would not be carried over to the new segment. [Id.]. NMED's proposal excludes all non-perennial reaches within the watershed and all waters on the Kewa Pueblo. [Id.].

18. The WQCC finds that substantial evidence supports NMED's proposal to reclassify the middle and lower perennial reaches of Galisteo watershed into new Segment 139, with the recommended uses and criteria. Based upon the UAA and the testimony of Ms. Sarabia at hearing, the proposed changes are harmonious with the purposes of the WQA and the CWA and appropriate for adoption.

CONCLUSIONS OF LAW

1. Under NMSA 1978, Section 74-6-4(D), the Commission is authorized to adopt water quality standards for surface and ground waters in New Mexico.
2. NMED's Revised Proposed Amendments, as set forth in Attachment A, are based upon credible scientific data and other evidence appropriate under the WQA.
3. NMED's Revised Proposed Amendments serve the purposes of both the WQA and the CWA.
4. NMED's Revised Proposed Amendments protect the public health and welfare and serve to enhance the quality of water in the State of New Mexico.
5. NMED's Revised Proposed Amendments are based upon substantial evidence, are not arbitrary or capricious, and are fully in accord with applicable state and federal law.
6. The Commission considered the record as a whole, and gave the weight it deems appropriate to all relevant facts and circumstances, including weighing the use and value of the

water for water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial and other purposes.

ORDER

Title 20, Chapter 6, Part 4 of the New Mexico Administrative Code (20.6.4 NMAC) is to be amended as indicated in Attachment A, with any appropriate corrections of formatting or other changes necessary to file these regulations with the New Mexico State Records Center. The regulatory change as described in this Order is hereby adopted, to be effective in accordance with applicable State Records Center procedures.



Butch Tongate, Chair
Water Quality Control Commission

Dated: 1/14/13

Attachment A

20.6.4.113 RIO GRANDE BASIN - The Santa Fe river and perennial reaches of its tributaries from the Cochiti pueblo boundary upstream to the outfall of the Santa Fe wastewater treatment facility.

A. Designated Uses: irrigation, livestock watering, wildlife habitat, ~~marginal coldwater aquatic life, secondary contact~~ primary contact and ~~warmwater aquatic life coolwater aquatic life.~~

B. Criteria: The use-specific criteria in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: temperature 30°C (86°F) or less, ~~dissolved oxygen 4.0 mg/L or more, and dissolved oxygen 5.0 mg/L or more as a 24-hour average. Values used in the calculation of the 24-hour average for dissolved oxygen shall not exceed the dissolved oxygen saturation value. For a measured value greater than the dissolved oxygen saturation value, the dissolved oxygen saturation value shall be used in calculating the 24-hour average.~~

20.6.4.121 RIO GRANDE BASIN - Perennial tributaries to the Rio Grande in Bandelier national monument and their headwaters in Sandoval county and all perennial reaches of tributaries to the Rio Grande in Santa Fe county unless included in other segments and excluding waters on tribal lands.

A. Designated Uses: domestic water supply, high quality coldwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact; and public water supply on Little Tesuque creek, the Rio en Medio, and the Santa Fe river ~~and Cerrillos reservoir.~~

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 300 μ S/cm or less; the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

20.6.4.136 RIO GRANDE BASIN – The Santa Fe river from the outfall of the Santa Fe wastewater treatment facility to Guadalupe Street.

A. Designated Uses: limited aquatic life, wildlife habitat, primary contact, livestock watering, and irrigation.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

20.6.4.137 RIO GRANDE BASIN – The Santa Fe river from Guadalupe Street to Nichols reservoir.

A. Designated Uses: coolwater aquatic life, wildlife habitat, primary contact, livestock watering, and irrigation.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

20.6.4.138 RIO GRANDE BASIN – Nichols and McClure reservoirs.

A. Designated Uses: high quality coldwater aquatic life, wildlife habitat, primary contact, public water supply and irrigation.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 300 μ S/cm or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

20.6.4.139 RIO GRANDE BASIN - Perennial reaches of Galisteo Creek and perennial reaches of its tributaries from Kewa Pueblo upstream to 2.2 miles upstream of Lamy.

A. Designated Uses: coolwater aquatic life, primary contact, irrigation, livestock watering, domestic water supply and wildlife habitat; and public water supply on Cerrillos reservoir.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.