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New Mexico Environment Department
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Sent via email to: jennifer.fullam@state.nm.us

RE: Comments on the New Mexico Environment Department's Proposed Amendments to New Mexico's Water Quality Standards (20.6.4 NMAC) – Triennial Review

Dear Ms. Fullam,

The undersigned organizations submit the following comments in response to the New Mexico Environment Department Surface Water Quality Bureau's ("NMED") request for comments on draft proposed changes to 20.6.4 NMAC as part of the Triennial Review of Water Quality Standards. Collectively, we represent thousands of New Mexicans that care about protecting clean water in New Mexico for drinking, irrigation, wildlife, recreation, and spiritual practices and traditions. We have come together to submit these comments with a common goal of ensuring that New Mexico's water quality standards support the diverse human and non-human uses of our state's water resources.

As a primary matter, we emphasize the State's obligation, pursuant to the Clean Water Act ("CWA"), to "protect the public health or welfare, enhance the quality of water," and wherever possible, ensure that water quality allows for the "protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water." 33 U.S.C. § 1313(c)(2)(A); 33 U.S.C. § 1251(a)(2). Similarly, the New Mexico Water Quality Act ("WQA") directs the Commission to adopt standards that "shall at a minimum protect the public health or welfare, enhance the quality of water and serve the purposes of the Water Quality Act." NM Stat. 74-6-4(D). These goals, in particular the emphasis on standards that enhance the quality of water, represent a fundamental truth in New Mexico: that water is the lifeblood of our communities, ecosystems, economy, and way of life.

Below, we provide recommendations on priorities for NMED to consider during the Triennial Review as well as comments on NMED's specific proposed amendments

I. PRIORITY ISSUES TO INCLUDE DURING THE 2021 TRIENNIAL REVIEW

We are fully cognizant that NMED is constrained by an inadequate budget and lack of staff resources. Nonetheless, there are numerous issues that we urge NMED to proactively consider during this Triennial Review.

A. Outstanding Waters (20.6.4.8 NMAC and 20.6.4.9 NMAC)

1. Waters in the Columbine Hondo Wilderness

It was the understanding of the undersigned organizations that NMED planned to nominate the waters in the Columbine Hondo Wilderness area as an Outstanding National Resource Water ("Outstanding Water") during this Triennial Review. NMED communicated its intention to add these waters to the existing wilderness Outstanding Waters to several representatives of the undersigned organizations during in-person meetings and conversations. We are disappointed that NMED has not included nominating these waters in its proposed changes at this time.

As background, in 2010, the NMED, the Energy Minerals and Natural Resources Department ("EMNRD") and the New Mexico Department of Game and Fish ("NMDGF") nominated all the waters in United States Department of Agricultural Forest Service Wilderness Areas as Outstanding Waters and the Water Quality Control Commission ("WQCC") subsequently designated these waters. The Columbine Hondo Wilderness had not yet been designated at that time and thus the waters of the Columbine Hondo were not included in this 2010 designation. Moreover, at the time of the 2010 nomination, NMED, EMNRD, and NMDGF did not provide detailed information about why every single waterbody in every New Mexico wilderness area met the Outstanding Water criteria at 20.6.4.9.B NMAC. Instead, information about why wilderness waterbodies as a class of waterbodies as a whole met these criteria was presented. The Columbine Hondo has since been officially designated as wilderness, and the waters within the Columbine Hondo now fall into this class waterbodies and meet the criteria laid out in the 2010 nomination. Thus, if NMED decided to move forward with nominating these waters, the bulk of the work has already been completed.

In addition, nominating the waters of the Columbine Hondo as Outstanding Waters meets objectives set out by Governor Lujan Grisham in her 2019 Climate Plan where she identified nominating Outstanding Waters as an important step for mitigating the impacts of a changing climate. While that language has since been removed, it does not obviate the imperative to strengthen protections for New Mexico's watersheds as a mechanism to bolster climate resilience.

Recommendation: We strongly urge NMED to nominate the waters of the Columbine Hondo as Outstanding Waters during the Triennial Review.

2. Change "Outstanding National Resource Waters" to "Outstanding Waters"

The unwieldy name of Outstanding National Resource Waters (ONRWs) is constantly being confused and mixed up. People consistently call them Outstanding *Natural* Resource Waters or mix up the order of the letters in the acronym and call them ORNWs or some other combination. We

suggest that NMED seek a change in name from "Outstanding National Resource Waters" to "Outstanding Waters." Not only will this make the name easier to remember, but it will also clear up the common misconception that ONRW protections are a federal designation, when in fact ONRWs are designated at the state level by the New Mexico Water Quality Control Commission.

While there may be some argument for maintaining the existing name due to the fact that ONRW protections are laid out in the federal Clean Water Act and associated regulations (specifically in Tier III of the federal antidegradation policy), these federal requirements and connections will not disappear by changing the name to something more approachable and easier to remember. This is especially the case if it is explicitly stated in 20.6.4 NMAC that Outstanding Waters are protected under Tier III of the federal antidegradation policy.

Other states have, notably, adopted different names for their Tier III waters. Pennsylvania for example calls their Tier III waters "Exceptional Value Waters." Alternatively, instead of replacing the name completely, NMED could consider a different abbreviation of Outstanding National Resource Waters. Instead of "ONRW," the abbreviation could be changed to "Outstanding Waters" throughout the 20.6.4 NMAC

Recommendation: Replace the name "Outstanding National Resource Waters" or "ONRW" or both with "Outstanding Waters".

3. Strengthen Outstanding Waters Implementation

Changes to the antidegradation policy and implementation plan are needed to ensure that appropriate steps are taken to address degradation to Oustanding Waters. Currently, the Outstanding Waters language found at 20.6.4.8.A(3)(a) and (4)(a) NMAC consists primarily of constraints on degradation to Outstanding Waters from future restoration or emergency activities. While these components of the standards are important to ensure that restoration and emergency activities can occur, protections should be expanded in 20.6.4.8 NMAC to prevent and at least mitigate *ongoing* degradation.

To do this, we recommend adopting specific requirements and steps in 20.6.4.8 NMAC to actively ensure that degradation is not occurring in New Mexico's designated Outstanding Waters from either ongoing or other proposed activities. Currently, all of the Outstanding Waters in New Mexico are on U.S. Forest Service (USFS) lands which, by law, must conform to state-defined water quality standards. 33 U.S.C. § 1323(a). 20.6.4.8.B NMAC should include requirements for cross agency consultation and engagement. 20.6.4.8.B NMAC could also outline how implementation of Outstanding Waters protection shall be assessed and summarized in the Clean Water Act 303d/305b Report. When degradation is found to Outstanding Waters, 20.6.4.8 NMAC should include requirements to sample more frequently, engage with landowners and other stakeholders to identify sources of degradation, prioritize restoration dollars in these waters, and prohibit all short and temporary degradation besides that associated with restoration.

Recommendation: Consider adding language along the lines of the following:

20.6.4.8.A Antidegradation Policy

(5) If degradation, besides the short-term degradation allowed under Subsection A(3)(a) through (e) and Subsection A(4) of this Section, is detected in an Outstanding Water:

(a) no additional short-term degradation, besides that allowed under Subsection A(4) and A(3)(c) shall be allowed;

(b) increased monitoring of the Outstanding Water by the Department at a frequency of at least once a year shall be conducted; and

(c) additional actions as outlined in the continuing planning process shall be initiated to determine the source of the degradation and to identify mitigating measures.

~~(5)~~ **(6)** In those cases where potential water quality impairment associated with a thermal discharge is involved, this antidegradation policy and implementing method shall be consistent with Section 316 of the federal Clean Water Act.

~~(6)~~ **(7)** In implementing this section, the commission through the appropriate regional offices of the United States environmental protection agency will keep the administrator advised and provided with such information concerning the surface waters of the state as he or she will need to discharge his or her responsibilities under the federal Clean Water Act.

20.6.4.8.B. Implementation Plan

(3) assesses the probable impact of the effluent on the receiving water relative to its ~~attainable~~ **existing** or designated uses and numeric and narrative criteria;

(**16**) develops list of surface waters of the state not attaining designated uses, pursuant to Sections 305(b) and 303(d) of the federal Clean Water Act**; and**

(17) develops list of designated Outstanding Waters where degradation has been detected and identifies potential sources of pollution, enforcement actions to be taken, and BMPs to be implemented to halt or remedy the degradation.

B. Definition of Existing Use (20.6.4.7.E(4))

We recommend amending this definition to include language from EPA's Water Quality Standards Handbook[1] to clarify how an existing use is demonstrated.

Recommendation: Add the following language to the definition of "existing use":

(4) "Existing Use" means 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. **An existing use can be established by demonstrating that fishing, swimming, or other uses have actually occurred since November 28, 1975; or that the water quality is suitable to allow the use to be attained.**

C. Definition of Highest Attainable Use (20.6.4.7.H NMAC)

The "highest attainable use" is referred to several times in the standards and it would be helpful to define it in 20.6.4.7 NMAC. We recommend incorporating the definition for highest attainable use included in Clean Water Act regulations.[2]

Recommendation: Add a definition for "highest attainable use" to 20.6.4.7.H(4):

[1] https://www.epa.gov/sites/production/files/2014-10/documents/handbook-chapter4.pdf (page 4).

[2] Definition found at 40CFR131.3

(4) "Highest attainable use" is the modified aquatic life, wildlife, or recreation use that is both closest to the uses specified in section 101(a)(2) of the Act and attainable, based on the evaluation of the factor(s) in 131.10(g) that preclude(s) attainment of the use and any other information or analyses that were used to evaluate attainability.

D. Critical Low Flow (20.6.4.11.B NMAC)

Critical low flow is another area of the standards that should be updated to reflect the impacts of climate change. Climate change causes or contributes to increased drought and flashier flows in New Mexico's waters. More regular attention to calculating the critical low flow is therefore needed. At a minimum, we suggest requiring that 4Q3 be freshly calculated during every permit renewal process.

Recommendation: Add the following language to 20.6.4.11.B NMAC:

(3) Critical low flow of receiving waters shall be calculated during permit issuance, modifications, and renewals.

E. Mixing Zones (20.6.4.11.E and F NMAC)

Climate change is causing or contributing to massive, previously unseen, fluctuations of flow in New Mexico's rivers and streams, making it impossible to ensure that mixing zones are protective. If the flow in a receiving waterbody swings from large flood events to very low flows, as we can expect, and in fact are already seeing in a changing climate, it is difficult to determine the dilution factor to use to calculate a mixing zone. In addition, increased flooding events can result in increased pollutant loads in receiving waters from many different sources, making mixing zones all the more inappropriate. Our concern is amplified by the fact that climate change is not a static event, but ongoing and intensifying event that will, even if we constrain fossil fuel and other carbon emissions, transpire for decades and even centuries. Therefore, a concrete step to make New Mexico standards more responsive to climate change is to stop allowing mixing zones.

Recommendation: Eliminate mixing zones in New Mexico as an appropriate step in response to the massive, ongoing changes and fluctuations in flow we are seeing and expect to see as a result of a changing climate.

F. Applicability of Water Quality Standards – Exceptions (20.6.4.11.H(1))

It is not clear whether or how increased storm events due to climate change taken into account by this section. It appears that this section of the standards could be read to exempt climate change impacts, such as increased intensity of storm events and faster spring runoff, from applicability of water quality standards. Even without considering climate change impacts, this section is inappropriately broad and we recommend deleting it.

NMED itself has identified stormwater as "a leading cause of water pollution" in New Mexico.[3] It does not make sense to have a whole exception for the applicability of water quality standards

[3] New Mexico Environment Department/Surface Water Quality Bureau (NMED/SWQB). 2020. 303d/305b Report for 2020-2022. Santa Fe, NM. Pg. 52. Available at: https://www.env.nm.gov/surface-water-quality/wp-content/uploads/sites/25/2018/03/WQCC-approved-2020-IR_120820.pdf

during storm events. Fish still swim in our rivers during storm events and need dissolved oxygen to breathe. People boat and swim in waters that have stormflow impacts. In some cases, these impacts can be seen hours or even up to a day after a storm event. In addition, it is difficult to understand how this exception is implemented. For example, how does NMED determine what contaminants in stormwater runoff are from natural causes? Many of the contaminants we see in stormwater are from poor land use management, which certainly is not "natural".

Climate change adds another layer of complexity and difficulty in implementing this exception, because with a changing climate we are likely to see increased intensity of storm events that will result in increased pollutant loading. Climate change is driven by anthropogenic factors upsetting natural climatic and ecological regimes, and water quality impacts from climate change should not be folded into this exception. We therefore strongly recommend deleting this section. However, if it remains in the standards, NMED should add language to constrain this section so that designated uses are better protected. Specifically, language could be added to exclude climate change impacts from this exception.

Recommendation: We strongly propose deleting this section (20.6.4.11.H(1)) in its entirety. At the very least, impacts from climate change should be specifically excluded:

> H. Exceptions: Numeric criteria for temperature, dissolved solids, dissolved oxygen, sediment or turbidity adopted under the Water Quality Act do not apply when changes in temperature, dissolved solids, dissolved oxygen, sediment or turbidity in a surface water of the state are attributable to:
>
> (1) natural causes (**water quality impacts from climate change and** discharges from municipal separate storm sewers are not covered by this exception.); or

G. Compliance with Water Quality Standards (20.6.4.12.G NMAC)

We recommend putting constraints on compliance schedules to guard against overuse and abuse of this important tool. For example, we suggest adding a time limit of 5-years and requirements for revisiting compliance schedules during permit renewals. In addition, if a permit is administratively extended, any compliance schedule included in the permit should be reviewed 5-years after issuance of the permit.

Recommendation: Include time constraints and review requirements for compliance schedules:

> G. ……Compliance schedules may be included in NPDES permits at the time of permit renewal or modification and shall be written to require compliance at the earliest practicable time, **but not longer than 5-years.** Compliance schedules shall also specify milestone dates so as to measure progress towards final project completion (e.g., design completion, construction start, construction completion, date of compliance). **If a permit is administratively continued, a facility with a compliance schedule must show compliance at end of the initial 5-year permit period.**

H. Incorporate Produced Water Constituents into 20.6.4.900 NMAC

With the passage of HB 546, it is imperative that NMED take steps to identify and propose adoption of numeric criteria for the numerous contaminants that are found in produced water to ensure that these constituents can be properly regulated and monitored. We urge NMED to begin the process of developing numeric criteria for the numerous constituents that are found in produced water that do not currently have numeric water quality standards in 20.6.4 NMAC.

There is substantial data available, including in many cases approved analytical methods, for close to 200 constituents found in produced water for which New Mexico currently does not have standards. We urge NMED to look at the list submitted by the Environmental Defense Fund ("EDF") on 12/9/20 as part of this comment period to see if there are some easy-to-implement criteria, in terms of available data and information, that would enable NMED to propose several constituents during the current Triennial Review.

In addition, we urge NMED to immediately begin to develop numeric criteria to propose for adoption within the next 2 years. While we realize that developing numeric criteria can be a long and arduous process, it is essential that the standards are robust enough to protect the existing and designated uses of New Mexico's water resources *before* produced water is discharged into surface waterbodies.

Recommendation: Identify constituents found in produced water for which there is available data for inclusion in 20.6.4.900 NMAC during the current Triennial Review. In addition, start now to develop numeric criteria for the close to 200 constituents common in produced water for which we currently do not have a standard.

I. Propose Standards for PFAS

PFOA and PFOS belong to a large class of synthetic chemicals known as per- and polyfluoroalkyl substances, or PFAS. PFAS contamination is a major water quality issue facing New Mexico that has resulted in economic losses to our state's dairy industry and substantial impacts to public health and wildlife populations. Other states are starting to adopt numeric standards for PFAS and New Mexico could easily learn from and borrow from these efforts. For example, New Jersey has recently adopted the following PFAs criteria for drinking and groundwater:

- 14 parts per trillion for PFOA
- 13 parts per trillion for PFOS

Minnesota has recently set the following PFAS standards for several surface waterbodies:

- 0.37 nanograms PFOS per gram (ng/g) in fish tissue
- 0.05 ng/L PFOS in water

Recommendation: We urge NMED to propose numeric criteria for PFAS to apply at a minimum to the public water supply use.

J. Develop and Propose Wetland Specific Water Quality Standards.

Developing wetland water quality criteria is a critical step the state could take to help New Mexico mitigate the impacts of the changing climate and the impacts from the disastrous Dirty Water Rule. Wetlands, especially in the arid west, provide many critical functions to downstream users, wildlife, and communities and protecting these resources should be a priority. For example, wetlands can

help sustain flows in our streams throughout the growing season by soaking up snowmelt and then gradually releasing water to create more sustained downstream flows. In addition, wetlands can serve to filter pollutants, help with flood control, and provide wildlife habitat. We need to be able to identify which wetlands are impaired so we can work to mitigate impacts and prioritize restoration. Wetland water quality standards would help the state protect and restore the limited remaining wetland resources in New Mexico.

Recommendation: Develop and proposed wetland specific water quality standards.

II. COMMENTS ON NMED'S PROPOSED AMENDMENTS

Generally, we thank NMED for including language on climate, emerging contaminants, and toxic pollutants. Our specific comments below are organized in order that these topics appear in the standards.

A. Executive Order on Climate Change (20.6.4.6.D NMAC)

We support the inclusion of the reference to the 2019 Executive Order on Climate Change and thank NMED for including it in its proposed changes. It would be useful to contextualize how climate change is expected to impact water quality in this section, otherwise this section and the definition of climate change provided at 20.6.4.7.C(4) NMAC are left hanging there without a reference point. NMED has done a good job of detailing the climate change impacts that we are seeing and expect to see on New Mexico's water quality in its proposed 2020-2022 303b/305b Report. We recommend adding this 303d/305b language to this section as proposed below.

Recommendation: Considering adding the following language to 20.6.4.6.D:

> D. In accordance with Executive Order On Addressing Climate Change And Energy Waste Prevention (2019-003), these standards serve to address the inherent threats to water quality due to climate change by setting water quality goals and fostering resiliency. **The impact of climate change on the state's water resources should be acknowledged because the science shows that these changes will lead to further problems and uncertainties. Droughts are predicted to increase in both frequency and severity in many regions of the world, including the southwestern U.S., due to climate change. In general, droughts and the immediate recovery period have substantial water quality effects on the waterbody and its watershed. For example, decreases in stream flow typically increase pollutant concentrations due to evaporation and less dilution. Other water quality impacts associated with climate change and drought include higher water temperatures, enhanced algal production, toxic algal blooms, and lower dissolved oxygen levels, all of which are stressors to aquatic life. As temperature and precipitation patterns undergo extreme cycles, more frequent and more powerful storms will increase pollutant runoff from the watershed, physically modify and erode riparian habitat, and disrupt biological communities that depend on these habitats. In addition, shifting temperature and precipitation patterns affect vegetation composition and density and increase the propensity for wildfire in non-fire adapted ecosystems.**

B. Definition of Baseflow (20.6.4.7.B(1) NMAC)

While we support adding a definition of baseflow to the standards, we question the need to reference effluent dominated systems. This is particularly so because it appears that this reference

then appears to result in the need to add a problematic definition of effluent dominated systems under 20.6.4.7.E(2) NMAC. Referencing effluent dominated systems does not add to the definition of baseflow and we therefore recommend removing the reference.

Recommendation: Amend the Baseflow definition to remove reference to effluent dominated systems:

> (7) "Baseflow" refers to the sustained flow volume of a stream or river. In natural systems, baseflow is comprised from regional groundwater inflow and local shallow subsurface inflow that is temporarily stored in the watershed during snowmelt and rain events and slowly released to the stream or river over time. ~~**In effluent dominated systems,**~~ **In some systems,** baseflow is comprised predominantly from effluent with little to no subsurface contributions. Baseflow in both scenarios is critical for sustaining flow in streams and rivers over seasonal and longer timeframes.

C. Definition of Climate Change (20.6.4.7.C(4) NMAC)

Adding a definition of climate change to the standards is appropriate and helpful in positioning the state to be responsive to the challenges that climate change poses to water quality in New Mexico. It would be helpful to include the language suggested above for 20.6.4.6.D NMAC to provide guidance as to how climate change is relevant to water quality to provide more context for this definition. In addition, we recommend clarifying that impacts from climate change are not natural causes.

Recommendation: Include the following clarification in the climate change definition:

> (4) Climate Change refers to any significant change in the measures of climate lasting for an extended period of time and includes major changes in temperature, precipitation, wind patterns or other effects, that occur over several decades or longer. **Climate change is not considered a natural cause of water quality impairment.**

D. Contaminants of Emerging Concern (20.6.4.7.C(7) NMAC)

We support the addition of this definition and thank NMED for proposing it in its proposed amendments. In addition to referencing pharmaceuticals and personal care products, we recommend also listing per- and polyfluoroalkyl substances (PFAS) as an example of a contaminant of emerging concern, especially if NMED is not going to suggest adding a numerical PFAS water quality standard. In addition, we suggest adding language taken from EPA's definition of contaminants of emerging concern[4] where they detail the impacts of these contaminants to aquatic life.

Recommendation: Consider changing the definition as follows:

> (7) "Contaminants of Emerging Concern" refers to water contaminants, including **per- and polyfluoroalkyl substances (PFAS),** pharmaceuticals, and personal care products, that may cause ecological or human health impacts at low concentrations. Contaminants of emerging concern are generally chemical compounds, that although

[4] https://www.epa.gov/wqc/contaminants-emerging-concern-including-pharmaceuticals-and-personal-care-products

suspected to ~~potentially~~ have impacts, do not have regulatory standards, are not routinely monitored for and the concentrations to which negative impacts are observed have not been fully studied. **Emerging contaminants may demonstrate low acute toxicity but cause significant reproductive effects at very low levels of exposure. In addition, the effects of exposure to aquatic organisms during the early stages of life may not be observed until adulthood.**

E. Definition of Effluent Dominated (20.6.4.7.E(2) NMAC)

We question the need for this definition and suggest that NMED remove it from its proposed amendments. While it is unclear how NMED intends to use this definition, it appears that perhaps the definition was added only in response to the new definition for baseflow, which includes a mention of effluent dominated waters. As noted above, it is not necessary to include the term effluent dominated in the baseflow definition. Adding this definition may only cause confusion as there are several effluent dominated systems included in classified segments under 20.6.4.101-899 NMAC with specific standards, including protections for primary contact. If NMED does move forward with this definition, we recommend either removing the secondary contact reference from the definition, or making the definition more seasonally specific than a 12-month average. For example, there could be high natural seasonal flows that allow some primary contact in waters where the 12-month average was still three quarters effluent.

F. Definition of Persistent Toxic Pollutants (20.6.4.7.P(3) NMAC)

We thank NMED for including this definition and support its inclusion in the standards.

G. Antidegradation – Existing Uses (20.6.4.8.A(1) NMAC)

To ameliorate confusion, it would be helpful to include additional language defining how to identify existing uses, either here in this section or in the definition section as we have proposed above.

Recommendation: Include the following language from EPA's Water Quality Standards Handbook either here in this section or in the definition section as suggested in our comment above: "An existing use can be established by demonstrating that fishing, swimming, or other uses have actually occurred since November 28, 1975; or that the water quality is suitable to allow the use to be attained."

H. Review of Standards (20.6.4.10 NMAC)

1. 20.4.6.10.B NMAC

The addition of proposed Section 20.6.4.10.B is helpful and provides useful clarity and guidance to ensure that existing uses are protected.

2. Proposed 20.6.4.10.C NMAC

This section in general is confusing and unnecessary and seems aimed at providing flexibility that is already provided in 20.6.4.10.E and F. NMAC. We suggest entirely deleting this section.

In addition, the proposed language of this section focuses entirely on downgrading criteria without presenting avenues for setting more protective criteria. If NMED does not propose to delete this section, we recommend making changes to reflect the ability to set more protective criteria.

Recommendation: We strongly recommend deleting proposed 20.6.4.19.C NMAC in its entirety. If NMED is unwilling to propose deleting this section in its entirety we suggest the following changes to NMED's proposed language:

> C. It is recognized that, in some cases, numeric criteria for a particular designated use may not adequately reflect the local conditions and the adaptive nature **or lack thereof** of particular organisms to utilize a water without harm. In these cases, a water quality criterion may be modified to reflect the natural condition of a specific waterbody. When justified by sufficient data and information, a numeric water quality criterion may be adopted or modified to ~~a less stringent criterion and still~~ protect the attainable uses of the waterbody. The modification of the criterion does not necessarily change the designated use. The removal or amendment of a designated use to a less stringent use can only be done through a use attainability analysis in accordance with 20.6.4.15 NMAC.

3. Proposed 20.6.4.10.D. NMAC

Similar to our comments for 20.6.4.10.C above, this section appears redundant and unnecessary given the flexibility provided in 20.6.4.10.E and F. NMAC. We propose deleting this section in its entirety.

Recommendation: Delete proposed section 20.6.4.10.D NMAC in its entirety.

I. Toxic Pollutants (20.6.4.13.F NMAC)

The reference to toxic pollutants found in 20.6.2 NMAC is useful, and we support this proposed change. All too often the surface and groundwater bureaus are siloed into separate worlds when in reality groundwater and surface water are very much connected and interrelated. We urge NMED to explore additional ways to create crossover between the two agencies.

J. Use Attainability Analysis (20.6.4.15 NMAC)

1. Mechanism to Remove a Designated Use (20.6.4.15.B)

In addition to referring to the Hydrology Protocol, the Interim Economic Guidance, and the Technical Support Manual, this section should also refer back to the applicable sections of 20.6.4.10 NMAC, such as sections 20.6.4.10.A(1)(a)-(b).

2. Definition for Highest Attainable Use Should be added to 20.6.4.15.C

A definition for "highest attainable use" should be added to section 20.6.4.7 NMAC and referenced here in this section.

3. The Formatting and Headings are confusing for 20.6.4.15.D

The formatting and headings in this section are confusing and should clarified.

Recommended changes to the formatting and headings of 20.6.4.15.D and E:

> D. Process to remove a designated use and establish the highest attainable use.
> ~~(1)~~ The process for developing a use attainability analysis and petitioning the commission for removing a designated use and establishing the highest attainable use shall be done in accordance with the State's current *Water Quality Management Plan/Continuing Planning Process*.
>
> **E. Process for Department conducted expedited use attainability analyses and determination for highest attainable use.**
> ~~2)~~ **(1)** If the findings of a use attainability analysis, conducted by the department, in accordance with the department's *Hydrology Protocol* (latest edition), demonstrates that federal Clean Water Act Section 101(a)(2) uses, that are not existing uses, are not feasible in an ephemeral water body due to the factor in 40 CFR 131.10(g)(2), the department may consider proceeding with the expedited use attainability analysis process in accordance with the State's current *Water Quality Management Plan/Continuing Planning Process*. The following elements must be met for the expedited use attainability analysis process to be authorized and implemented:
> (a) The department is the primary investigator of the use attainability analysis;
> ……..
> (g) The department submitted the use attainability analysis and response to comments to region 6 EPA for technical approval.
> **(h)** If technical approval is granted by region 6…..

4. Current Proposed Section 20.6.4.15.E Should be Better Formatted

This section currently stands out because it is one long paragraph. It should be broken out into subsections as is done in other parts of the standards. To provide clarity about what steps must be taken by outside parties when conducting a UAA, this section should be formatted in a manner with subsections that is similar to other sections in the standards.

Recommendation: Reformat this section to include subsections.

K. Waters Within Los Alamos National Laboratory (20.6.4.126 NMAC, 20.6.4.128 NMAC and 20.5.4.140 NMAC)

The proposed changes for the classified segments of waters within Los Alamos National Laboratory are appropriate and necessary for protecting water quality on the Pajarito Plateau. These proposed changes appropriately apply the same level of protections provided to other waters in state.

L. Pecos River – Brantley Reservoir Upstream to Salt Creek (near Acme) (20.6.4.231 NMAC)

We support the creation of this new segment and the change to a more protective contact use (from secondary to primary contact) for this stretch.

We thank NMED for its thoughtful work during this Triennial Review process. We appreciate the opportunities for public engagement and comment and we look forward to participating in the

Triennial Review hearing. Thank you for considering these comments and please do not hesitate to reach out if you need further clarification or information on any of the issues we have raised.

Sincerely,
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