



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 6  
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DALLAS, TEXAS 75270

July 24, 2020

Jennifer Pruett, Chair  
New Mexico Water Quality Control Commission  
1190 St. Francis Drive, Suite S-2102  
Santa Fe, New Mexico 87505  
Santa Fe, NM 87502-5469

Dear Ms. Pruett:

The Environmental Protection Agency (EPA) has completed its review of the amendments to the *Standards for Interstate and Intrastate Surface Waters 20.6.4 NMAC*. The revisions to state's water quality standards were adopted by the New Mexico Water Quality Control Commission (WQCC) on March 10, 2020 and became effective as state law on May 22, 2020. The EPA received both your letter dated May 21, 2020 to Ken McQueen, Regional Administrator and the New Mexico Attorney General's certification letters dated April 28, 2020 to Charles Maguire, Water Division Director.

As described in your letter, the revisions to the New Mexico *Standards for Interstate and Intrastate Surface Waters 20.6.4 New Mexico Administrative Code (NMAC)* were developed through a coordinated effort by the EPA, the City of Raton, and the New Mexico Environment Department (Department). This effort resulted in a discharger-specific nutrient temporary standard brought before the WQCC by the City of Raton Wastewater Treatment Plant (WWTP) in Colfax County, New Mexico. For the purposes of the EPA's review of revisions based on 20.6.4.10 F. NMAC and specifically 20.6.4.318 NMAC, the terms "temporary standard" and water quality standards "variance" are equivalent.

Based on our review of the supporting demonstration developed by the Department and supplemented by additional analyses from the City of Raton, the EPA has concluded that the discharger-specific nutrient temporary standard for the City of Raton WWTP in Colfax County, New Mexico described in *20.6.4.318 NMAC* is approved. This temporary standard applies from the City of Raton WWTP outfall to Doggett Creek, to its confluence with Raton Creek. Following this approval, this temporary standard is effective for Clean Water Act purposes.

The approval of new and revised water quality standards is subject to the results of consultation under section 7(a)(2) of the Endangered Species Act (ESA). Section 7(a)(2) of the ESA requires that federal agencies consult with the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS), as appropriate, to ensure that actions they take, fund, or authorize are not likely to jeopardize the continued existence of listed species or result in the adverse modification or destruction of habitat. The EPA identified five species under FWS jurisdiction that are present in the defined action area from the City of Raton WWTP outfall to Doggett Creek, to its confluence with Raton Creek. The EPA initiated consultation and requested

concurrence with our conclusion regarding the effects of approving the nutrient temporary standard for Raton WWTP and transmitted a Biological Evaluation to the FWS on July 2, 2020. Based on its analysis, EPA concluded that approval of the amendments in this action is expected to result in incremental water quality improvements over time and may affect, but is not likely to adversely affect the Mexico meadow jumping mouse (*Zapus hudsonius luteus*), piping plover (*Charadrius melodus*) and southwestern willow flycatcher (*Charadrius melodus*). The EPA has also determined that its action will have no effect on the Canada lynx (*Lynx canadensis*) and the Mexican spotted owl (*Strix occidentalis lucida*). The USFWS concurred with the EPA's conclusion through its letter dated July 21, 2020.

I appreciate the WQCC's and Department's considerable efforts and cooperation in the development of this temporary standard. If you have any questions or concerns, please contact me at (214) 665-7101, or contact Russell Nelson at (214) 665-6646 or [nelson.russell@epa.gov](mailto:nelson.russell@epa.gov).

Sincerely,



Charles W. Maguire  
Director  
Water Division

Enclosure

cc: Shelly Lemon, Chief, Surface Water Quality Bureau, New Mexico Environment Department (via email to [shelly.lemon@state.nm.us](mailto:shelly.lemon@state.nm.us))

Jennifer Fullam, Standards, Planning & Reporting Team Leader, New Mexico Environment Department (via email to [jennifer.fullam@state.nm.us](mailto:jennifer.fullam@state.nm.us))

Pam Castaneda, Administrator for Boards and Commissions, New Mexico Environment Department (via email to [pam.castaneda@state.nm.us](mailto:pam.castaneda@state.nm.us))

Christopher J. Vigil, Special Assistant Attorney General, New Mexico Environment Department (via email to [christopherj.vigil@state.nm.us](mailto:christopherj.vigil@state.nm.us))

**TECHNICAL SUPPORT DOCUMENT:**

**EPA REVIEW OF NUTRIENT TEMPORARY STANDARD FOR  
THE CITY OF RATON WASTEWATER TREATMENT PLANT  
NPDES PERMIT NO. NM0020273 TO DOGGETT CREEK**

**Revisions Adopted by the  
New Mexico Water Quality Control Commission  
Modifying Title 20 Chapter 6 Part 4  
Standards for Interstate and Intrastate Surface Waters**

**U.S. EPA REGION 6  
WATER DIVISION**

July 23, 2020

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# 1. Executive Summary

## *1.1 Regulatory Requirements and Purpose*

As described in Section 303(c) of the Clean Water Act (CWA) and in the standards regulation within the Code of Federal Regulations (CFR) at 40 CFR 131.20, states and authorized tribes have primary responsibility for developing and adopting water quality standards to protect their waters. State and tribal water quality standards consist of three primary components: designated uses, criteria to support those uses, and an antidegradation policy. In addition, CWA Section 303(c)(1) and 40 CFR 131.20 require states to hold public hearings at least once every three years to review and, as appropriate, modify and adopt standards. As required by 40 CFR 131.21, the U.S. Environmental Protection Agency (EPA) reviews new and revised surface water quality standards that have been adopted by states and authorized tribes. Authority to approve or disapprove new and/or revised standards submitted to EPA for review has been delegated to the Water Division Director in EPA Region 6. Tribal or state water quality standards are not effective under the CWA until approved by the EPA.

The purpose of this Technical Support Document (TSD) is to describe EPA's analysis of the site-specific revisions to the *Standards for Interstate and Intrastate Surface Waters 20.6.4 NMAC*.<sup>1</sup> The New Mexico Water Quality Control Commission (Commission) adopted these revisions to its water quality standards subject to the provisions in 20.6.10 F. NMAC and submitted these revisions to the EPA for review and approval by letter dated May 21, 2020.

## *1.2 Water Quality Variance/Temporary Standard*

The statutory basis for water quality standards variances draws from Section 101(a)(2) of the CWA, which describes the objective of the Act: to restore and maintain the chemical, physical, and biological integrity of the nation's waters wherever attainable. The 2015 revisions to the federal water quality standards regulation at 40 CFR Part 131 included the development of 40 CFR 131.14, which establishes a framework for water quality standards variances. Under this provision and as defined at 40 CFR 131.3(o), a water quality standard variance is "...a time-limited designated use and criterion for a specific pollutant(s) or water quality parameter(s) that reflects the highest attainable condition during the term of the variance.". This provides a regulatory mechanism that allows progress toward attaining a designated use and criterion that is not currently attainable.

A state or authorized tribe must justify the need for a WQS variance by demonstrating that the designated use and criterion are not attainable throughout the term of the water quality standard (WQS) variance because of one of seven factors (40 CFR 131.14 (b)(2)(i)(A)). The state or authorized tribe must then identify the requirements that represent the highest attainable condition (HAC) of the water body or waterbody segment(s) that apply throughout the term of the WQS variance. The term of the WQS variance must also be identified, and "...must only be as long as necessary to achieve the highest attainable condition...". (40 CFR 131.14(b)(1)(iv)). If

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<sup>1</sup> <https://www.env.nm.gov/surface-water-quality/wqs/>

a WQS variance has a term longer than five years, the HAC must be reevaluated at least once every five years (40 CFR 131.14(b)(1)(v)).

For the purposes of the EPA’s review of 20.6.4.10 F. NMAC, the terms “temporary standard” as used by the New Mexico Environment Department (NMED) and water quality standards “variance” are equivalent. This discharger-specific temporary standard is based on a demonstration developed by the NMED in coordination with the EPA and the City of Raton, New Mexico specific to its Wastewater Treatment Plant (WWTP).<sup>2</sup> The discharger-specific demonstration developed by the NMED evaluated the conditions preventing attainment of New Mexico’s narrative nutrient criterion which the state interprets through nutrient threshold concentrations (TN and TP) for the City of Raton’s WWTP discharge to Doggett Creek and downstream to its confluence with Raton Creek. The EPA’s analysis relies on the supporting documentation developed by the NMED Surface Water Quality Bureau (SWQB)<sup>2</sup> as part of this coordinated effort.

### ***1.3 Summary of Underlying Designated Uses and Numeric Thresholds***

The New Mexico water quality standards provide a framework for adopting temporary standards through 20.6.10 F. NMAC. This state provision is based on the EPA’s regulation for water quality standard variances found at 40 CFR 131.14. The New Mexico regulation at 20.6.10 F. NMAC is intended to address situations where water quality-based effluent limits (WQBELs) are not currently achievable and to create a clear path to compliance that is achievable and affordable in the near-term and encourages continuing improvements to water quality in the long-term.

Doggett Creek is a perennial stream with designated uses of warmwater aquatic life, livestock watering, wildlife habitat and primary contact. Based on New Mexico’s threshold values for total nitrogen (TN) and total phosphorus (TP) in **Table 1** below, the receiving water falls within the TN Flat class and the TP Flat-Moderate class. Thus, the nutrient threshold concentrations that interpret the narrative criterion to derive the WQBEL for Doggett Creek are TN = 0.69 mg/L and TP = 0.061 mg/L.

**Table 1. Nutrient (TP and TN) Thresholds Values Based on Reference Conditions**

	Total Nitrogen (mg/L)			Total Phosphorous (mg/L)		
	TN Flat	TN Moderate	TN Steep	TP High-Volcanic	TP Flat-Moderate	TP Steep
<b>Threshold</b>	0.69	0.42	.030	0.105	0.061	0.030

### ***1.4 EPA Action on the Revised Provisions***

As described in the following analysis, the EPA considered whether the discharger-specific temporary standard that would apply from the point of discharge from the City of Raton wastewater treatment plant (WWTP) to Doggett Creek to the confluence of Doggett Creek with Raton Creek is consistent with 40 CFR Part 131. The EPA determined that the temporary

<sup>2</sup> New Mexico Environment Department – Surface Water Quality Bureau. 2019. Nutrient Temporary Standard for: City of Raton Wastewater Treatment Plant NPDES Permit No. NM0020273 to Doggett Creek.

standard establishes the highest attainable condition for this portion of Doggett Creek, that it will result in incremental water quality improvements over the term of the temporary standard, and that it is consistent with 40 CFR 131.5(a)(4) and 40 CFR 131.14 and can be approved pursuant to Section 303(c) of the CWA. Once approved by EPA, the temporary standard will be effective for CWA purposes.<sup>3</sup>

## **2. Evaluation of Discharger-Specific Temporary Standard**

### ***2.1 Site and Water Quality Characterization***

Doggett Creek is part of the larger Canadian Headwaters watershed, which is bounded by the Sangre de Cristo Mountains to the west and the Great Plains to the east. This watershed drains approximately 1,725 square miles. Elevation ranges from 11,610 feet above sea level to 5,640 feet. The geology of the Canadian Headwaters watershed is characterized by sandstone, shale, mudstone, and claystone that are flanked by limestone or calcareous rocks in the west and mafic volcanic rocks in the east. Land cover in the New Mexico portion of watershed is 49% grassland, 31% evergreen forest, 15% shrub/scrub and 2% deciduous forest. The headwaters of Doggett Creek originate in the Sangre de Cristo Mountains, flowing southeast through the City of Raton, in Colfax County, NM, which lies approximately six and a half miles south of Raton Pass on the Colorado-New Mexico border. Doggett Creek is below the transition from the Southern Rockies and is on the western edge of Southwestern Tablelands.<sup>4</sup> Average annual precipitation in Colfax County is 16.34 inches. Doggett Creek is a tributary to Raton Creek, Chicorica Creek, and the Canadian River.

### ***2.2 Receiving Waters/Existing and Planned Controls***

As noted previously, Doggett Creek (AU ID NM-2305.A\_255) is a perennial stream with designated uses of warmwater aquatic life, livestock watering, wildlife habitat and primary contact. The NMED/SWQB supporting documentation<sup>2</sup> for the submission to EPA notes that the aquatic life use is not currently being attained in Doggett Creek. Doggett Creek is listed on the state's 2018-2020 Integrated List<sup>5</sup> as impaired due to nutrients and *E. coli* bacteria. This nutrient impairment is longstanding and was first identified in 1998 with data from the 1980s and 1990s. Sampling from 2006 and during the NMED's 2015-2016 Canadian watershed survey confirmed the nutrient impairment in Doggett Creek. TN and TP thresholds were exceeded in 100% of the samples at the station below the Raton WWTP, with a documented diel dissolved oxygen (DO) swing of 13.41 mg/L and periodic DO concentrations below 5.0 mg/L for greater than 4 hours.

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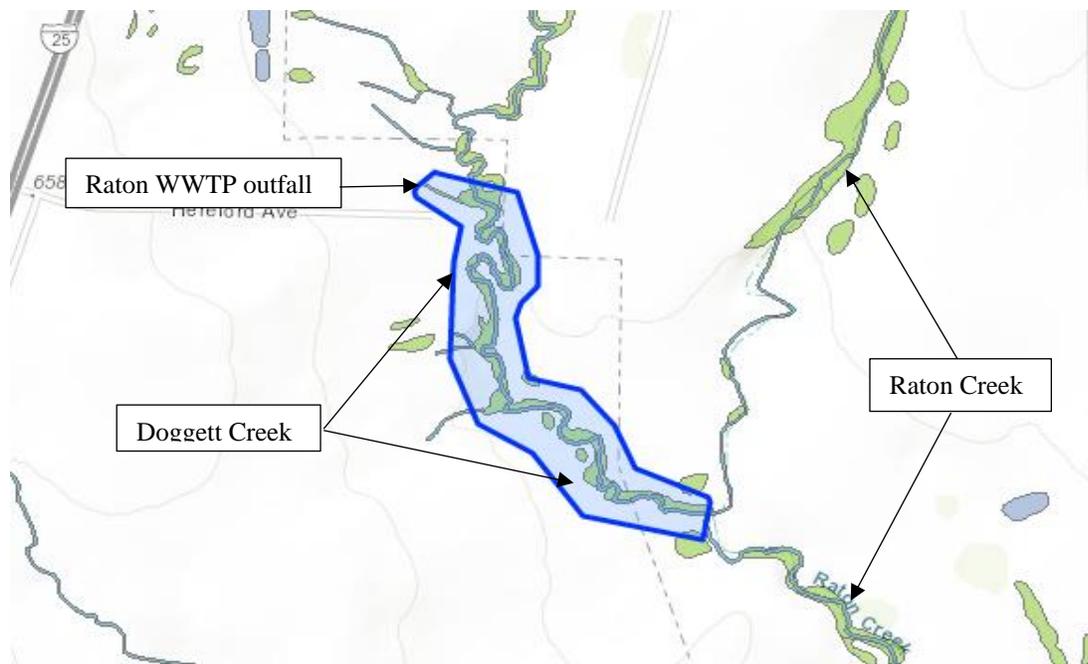
<sup>3</sup> Per 40 CFR 131.14(a)(3), a WQS variance, once adopted by the state and approved by EPA, is the applicable standard for purposes of the CWA under Section 131.21(d) through (e), for the following limited purposes. An approved WQS variance applies for the purposes of developing NPDES permit limits and requirements under 301(b)(1)(C), where appropriate, consistent with 40 CFR 131.14(a)(1). States and other certifying entities may also use an approved WQS variance when issuing certifications under section 401 of the CWA.

<sup>4</sup> Griffith, G.E., Omernik, J.M., McGraw, M.M., Jacobi, G.Z., Canavan, C.M., Schrader, T.S., Mercer, D., Hill, R., and Moran, B.C., 2006, Ecoregions of New Mexico (color poster with map, descriptive text, summary tables, and photographs): Reston, Virginia, U.S. Geological Survey (map scale 1:1,400,000).

<sup>5</sup> <https://www.env.nm.gov/surface-water-quality/303d-305b/>

To address situations like this, the NMED/SWQB worked with the EPA to develop its temporary standards regulations at 20.6.4.10(F) NMAC during the state’s 2013 triennial revision process. 20.6.4.10(F) NMAC authorizes temporary standards under state law and is based on the federal variance regulation at 40 CFR 131.14. The intent of the New Mexico regulation, like the federal regulation, is to address those instances where attainment of the underlying designated use and criterion are not currently feasible in a waterbody or by a specific discharger, but progress is possible. The approach for the Raton WWTP was the development of a temporary standard that represents the highest attainable condition for Doggett Creek during the term of the temporary standard. Other designated uses and associated criteria not specified in the temporary standard remain applicable for all CWA and New Mexico Water Quality Act (WQA) purposes consistent with the Raton WWTP NPDES permit (NM0020273).

**Figure 1.** Portions of Doggett Creek to confluence with Raton Creek



The New Mexico regulation defines a temporary standard as reflecting the highest attainable condition (HAC) during the term of the temporary standard (20.6.4.10.F.12 NMAC). For a temporary standard that applies to a specific discharger, the HAC is described in New Mexico’s provision as the “highest degree of protection feasible in the short-term,” and must be a quantifiable expression based on one of the factors outlined in the federal regulations at 40 CFR 131.14(b)(1)(ii)(A).

As noted previously, within the framework established in 20.6.4 NMAC and 40 CFR 131.14, NMED/SWQB worked with the EPA to develop a proposal for a temporary standard specific to the Raton WWTP for TN and TP. The highest attainable condition for any temporary standard cannot be lower than currently attained water quality. The highest attainable condition for this temporary standard is based on current effluent limitations and is specific to the Raton WWTP discharge to Doggett Creek.

As noted previously, the temporary standard has been adopted by the Commission and when approved by the EPA under CWA Section 303(c), the temporary standard will be effective for CWA purposes and will serve as the applicable standards for federal CWA National Pollution Discharge Elimination System (NPDES) permits. As a result, this temporary standard provides a legal bridge between the applicable water quality standard and NPDES permit limits.

The extensive supporting documentation<sup>2</sup> provided by the NMED includes an implementation schedule for improvements over the course of the temporary standard. The supporting documentation<sup>2</sup> also describes how the current effluent quality will be improved during the term of the temporary standard.

### **3. Consistency with Federal Regulations**

Provisions of CWA Sections 101(a)(2) and 303(c)(2) are implemented through federal WQS regulations contained in 40 CFR 131, including 40 CFR 131.21, which requires the EPA to review and approve or disapprove state adopted WQS. As part of this review, EPA considered the provisions at 40 CFR 131.5 and specifically sections 131.5(a)(4) and (6) when deciding whether to approve or disapprove state-adopted variances and 40 CFR 131.14 which identifies specific requirements pertaining to variances. As noted previously, the terms “temporary standard” and “variance” are equivalent.

#### ***3.1 Identification of Pollutant, Receiving Waters and Underlying Designated Use***

In its review of the temporary standard adopted by the Commission, the EPA determined that the detailed supporting documentation developed by the NMED/SWQB in coordination with the EPA specifies that the revisions to 20.6.4.318 NMAC apply to nutrients (TN and TP) and specifies that the temporary standard is specific to the City of Raton WWTP Colfax County, NM, from the point of discharge to Doggett Creek to its confluence with Raton Creek. This is consistent with the requirements of 40 CFR 131.14(a)(1) and 40 CFR 131.14(b)(1)(i). The New Mexico water quality standards retain the underlying aquatic life and other designated uses and associated criteria that were originally specified in New Mexico’s standards at 20.6.4.99 NMAC<sup>1</sup> consistent with the requirements in 40 CFR 131.14(a)(2).

#### ***3.2 Implementation of Technology-based Controls***

Doggett Creek was previously covered under the general classification for New Mexico’s surface water quality standards (20.6.4.99 NMAC) that assigned designated uses of warmwater aquatic life, livestock watering, wildlife habitat and primary contact. The state’s narrative nutrient criteria apply to waters under this classification. The temporary standard defines a specific regulatory segment (20.6.4.318 NMAC) for Doggett Creek, retaining the designated uses. Given that there are no technology-based requirements for nutrients applicable to publicly owned treatment works, technology-based effluent limits are not sufficient to meet New Mexico’s water quality standards.

### ***3.4 Demonstrating the Need for a Temporary Standard***

For a WQS variance to a 101(a)(2) use and subcategories of such uses, the federal WQS variance regulation requires that states demonstrate in supporting documentation that the underlying designated use and criterion are not feasible to attain throughout the term of the WQS variance on the basis of one of the seven regulatory factors specified in 40 CFR 131.14(b)(2)(i)(A) and 20.6.4.10.F.(5) NMAC.

In its analysis, the City of Raton found that reverse osmosis (RO) was the only available technology that would approach attainment of underlying numeric nutrient thresholds based on interpreting the state's narrative criteria. Although there was some uncertainty, adding a RO system to the end of the Raton WWTP's existing treatment process, treating 100% of the effluent through the RO system would allow the facility to approach the underlying designated use and criterion. Although RO could potentially result in attaining the underlying designated use and criteria, there was concern that RO would lead to substantial and widespread social and economic impacts throughout the community.

In response, a subsequent detailed analysis, *Substantial and Widespread Economic and Social Impact and Highest Attainable Condition Analysis Report for Raton, New Mexico* (2018) was prepared by contractors based on the EPA's Interim Economic Guidance.<sup>6</sup> Relevant financial and demographic information that illustrated the unique circumstances faced by Raton was considered in evaluating its financial capability, including Raton's declining population and thus its revenue base. Both primary and secondary analyses indicated that installation of RO to the Raton WWTP would likely result in substantial and widespread economic impacts to the entire community. Additional details regarding these analyses are presented in the supporting documentation referred to above in support of this temporary standard. This report provided detailed information indicating that the underlying water quality standards could not be met without widespread economic and social impacts (40 CFR 131.10(g)(6)) consistent with 40 CFR 131.14(b)(2)(i)(A). With this information, the NMED has demonstrated that attaining the underlying designated use and criterion was not feasible per 40 CFR 131.14(b)(2)(i)(A)(1) relying on a Factor 6 demonstration (40 CFR 131.10(g)(6)).

### ***3.5 Requirements that Represent the HAC***

The EPA considers the HAC to mean the condition that is both feasible to attain and is closest to the protection afforded by the designated use and criteria that will apply throughout the term of the temporary standard. In its supporting documents,<sup>2</sup> New Mexico defines the HAC as the highest degree of protection feasible in the short term, and the condition that will be the basis for effluent limits during the term of the temporary standard.

Federal regulations at 40 CFR 131.14(b)(1)(ii)(A) require that for discharger-specific variances, the HAC of the water body or waterbody segment must apply throughout the term of the WQS variance. The regulation also requires that there can be no lowering of the currently attained ambient water quality unless necessary for restoration activities. To identify the HAC for nutrients, NMED/SWQB considered the following technology options:

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<sup>6</sup> Available online at <https://www.epa.gov/wqs-tech/economic-guidance-water-quality-standards>.

- 1) Current wastewater treatment plant processes and configuration along with known upgrades being considered (advanced sequential batch reactor (SBR); investigating chemical precipitation for TP removal),
- 2) Current effluent concentrations for TN/TP as well as any existing effluent limitations, and
- 3) Comparison of design flow and long-term effluent volume (average 30-day discharge is 0.36 million gallons per day (mgd); maximum weekly average discharge is 0.62 mgd; design flow is 0.9 mgd) – the maximum weekly average discharge was used for cost estimations.

The Raton WWTP capabilities were a significant consideration in establishing the HAC. The Raton WWTP effluent phosphorous concentrations percentage is shifted towards the high end since the WWTP does not have enhanced phosphorus removal. Since the WWTP (intermittent cycle extended aeration system or ICEAS) does not have a clarifier and the solids separation is limited to the efficiency of the settle/decant phases of the SBR cycle, a target effluent condition of 0.5 mg/L of total phosphorus may not be regularly attained. Therefore, the target effluent condition (i.e., highest attainable condition), of 1.0 mg/L TP was considered to be consistent with treatment variability. The required treatment plant improvements necessary to attain TN concentrations of 5 mg/L or less and TP concentrations of 1 mg/L or less would require significant capital equipment expenditures and ongoing operating expenditures such that these improvements would result in substantial social and economic impact to the community, as shown in the NMED/SWQB supporting documents,<sup>2</sup>

The regulation identifies three possible ways to set the HAC as a quantifiable expression for a waterbody or segment when adopting a discharger-specific variance. These target effluent concentrations (TECs), representing expected long-term average performance were converted to highest attainable 30-day interim effluent conditions consistent with the EPA's Technical Support Document for Water Quality-based Toxics Control.<sup>7</sup> The resulting TECs values in **Table 2** below can be used by the EPA Region 6 to develop 30-day interim effluent condition values as average monthly limit values in the NPDES permit. New Mexico can also authorize the use of permit compliance schedules to provide time to meet any WQBEL derived from the HAC for this temporary standard, consistent with 40 CFR Part 122.47.

The temporary standard provision adopted by the Commission includes the numeric requirements that apply throughout the term of the variance that represent the HAC for the applicable segment of Doggett Creek consistent with 40 CFR 131.14(b)(1)(ii). The HAC described below in **Table 2** represents the interim effluent condition reflecting the greatest pollutant reduction achievable for Raton WWTP (NPDES permit no. NM0020273) and is represented by the TECs:

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<sup>7</sup> US Environmental Protection Agency. (1985). Technical Support Document for Water Quality-based Toxics Control. (EPA-440/4-85-032). Retrieved from: <https://nepis.epa.gov/Exe/tiff2png.cgi/2000LMAE.PNG?-r+75+-g+7+D%3A%5CZYFILES%5CINDEX%20DATA%5C81THRU85%5CTIFF%5C00000899%5C2000LMAE.TIF>

**Table 2. Highest Attainable Conditions**

<b>Pollutant Parameter</b>	<b>Highest Attainable Effluent Condition (mg/L)</b>
Total Nitrogen (TN)	5.0, long-term average; 8.0, 30-day average
Total Phosphorus (TP)	1.0, long-term average; 1.6, 30-day average

The provision at 20.6.4.318 C.(7) NMAC specifies the interim effluent condition and specifically states that the HAC will be either the HAC identified at the time of the adoption, or any higher attainable condition that is identified during any reevaluation, whichever is more stringent consistent with 40 CFR 131.14(b)(1)(iii).

### ***3.7 Term of the Temporary Standard***

The provision at 20.6.4.318.C.(9) NMAC specifies the expiration date of this temporary standard as being no later than 20 years from the effective date (20.6.4.318.C.(8) NMAC) and specifies that it exists only as long as necessary to achieve the HAC consistent with 40 CFR 131.14(b)(1)(iv). The temporary standard will be effective for CWA purposes on the date EPA approves it.

The City of Raton developed an Action and Implementation schedule for implementing the HAC based on the need for treatment equipment, installation/construction, startup/commissioning of its WWTP with upgraded intermittent Cycle Extended Air System (ICEAS) controls, demonstrating that the term of the temporary standard is "...only as long as necessary to achieve the highest attainable condition" as required by 40 CFR 131.14(b)(2)(ii). The target completion date of for this process is January 2040. This schedule is the basis for the 20-year term of the temporary standard/variance.

### ***3.8 Reevaluation of the Temporary Standard***

For temporary standards with a term greater than five years, the temporary standard must include "...a specified frequency to reevaluate the HAC... and a provision specifying how the state intends to obtain public input on the reevaluation." (40 CFR 131.14(b)(1)(v)). New Mexico's provision at 20.6.4.10.F(8) NMAC requires temporary standards to be reviewed during each succeeding review of water quality standards. More specifically, the provision at 20.6.4.318.C.(10) NMAC requires a reevaluation of the HAC and the financial need for the Raton temporary standard at each succeeding review of its water quality standards and at least once every five years from the effective date of the temporary standard consistent with the federal regulations at 40 CFR 131.14(b)(1)(v).

The provision at 20.6.4.318.C.(10) NMAC requires that if the discharger – the City of Raton WWTP - cannot demonstrate that sufficient progress is being made, the Commission may revoke the temporary standard or provide additional conditions to its prior approval. This provision also specifies that if the required reevaluation is not completed at the frequency specified or the NMED does not submit the reevaluation to the EPA within 30 days of

completion, the underlying designated use and criterion will be the applicable water quality standard for CWA purposes until the NMED/SWQB completes and submits the reevaluation to the EPA consistent with 40 CFR 131.14(b)(1)(vi).

#### **4. EPA Region 6 Action Recommendation**

Given that this is the first temporary standard that has been adopted by the Commission, it is important that the EPA ensure that all applicable provisions in the federal regulations at 40 CFR Part 131 have been met. New Mexico has historically made a significant effort to involve the public in informal meetings in advance of formal hearings as required by CWA Section 303(c) regarding the review water quality standards as seen in 20.6.4.10.A. and 20.6.4.10.F.(7) NMAC consistent with 40 CFR 131.5(a)(6). More specific to this temporary standard, 20.6.4.318.C.(10) NMAC provides for public input on the reevaluation of the temporary standard. This provision specifies that reevaluations will occur during NPDES permit renewals or WQS triennial reviews as applicable, in accordance with the state's most current approved Water Quality Management Plan and Continuing Planning Process documents. These provisions are consistent with federal requirements at 40 CFR 131.5(a)(6).

The Commission's letter dated May 21, 2020 to the EPA Region 6 Administrator Ken McQueen included the integrated water quality standards and detailed supporting documents that describe both the methods and analyses used to support the temporary standard as required by 40 CFR 131.6 and 6(b). The EPA also received a letter from the New Mexico Attorney General's Office dated April 28, 2020 to Charles Maguire, Water Quality Division Director certifying the adoption of the temporary standard consistent with state law as required by 40 CFR 131.6(e).

Based on the analysis and the reasons described above, EPA considers the temporary standard to be consistent with the requirements of 40 CFR 131 and specifically 40 CFR 131.14, and considers this temporary standard to be approvable.

#### **5. Additional Considerations**

##### ***5.1 Endangered Species Act Consultation***

The EPA's approval of revised aquatic life WQS is subject to the consultation requirement of Section 7(a)(2) of the Endangered Species Act (ESA). Under Section 7(a)(2) of the ESA, 16 U.S.C. §1536, the EPA has the obligation to ensure that its approval of these modifications to the New Mexico's *Standards for Interstate and Intrastate Surface Waters*, 20.6.4.318 NMAC will not jeopardize the continued existence of threatened and endangered species and their critical habitat in New Mexico.

The EPA considered the available information in the literature and information from the U.S. Fish and Wildlife Service (USFWS) in considering how current concentrations and incremental decreases in nutrients (**Table 1**) would affect the listed species within the defined action area. As described, this action area encompasses an approximate 1.4-mile portion of Doggett Creek from the City of Raton's WWTP outfall to its confluence with Raton Creek. This discharger-specific temporary standard retains New Mexico's underlying nutrient standards in

addition to the temporary limits based on the HAC. Based on an analysis of the applicable criteria, the EPA has concluded that the approval of this nutrient temporary standard adopted by the Commission for the portion of Doggett Creek defined as the action area is expected to result in the incremental water quality improvements over time, resulting in increased aquatic macroinvertebrate as well as fish diversity and potentially abundance. Based on an analysis of the potential effect on the prey of these species, the EPA concluded that its action may affect, but is not likely to adversely affect the Mexico meadow jumping mouse (*Zapus hudsonius luteus*), piping plover (*Charadrius melodus*) and southwestern willow flycatcher (*Charadrius melodus*). The EPA has also concluded that its action will have no effect on the Canada lynx (*Lynx canadensis*) and the Mexican spotted owl (*Strix occidentalis lucida*).

In addition, the EPA determined that its action will not affect species identified under the Migratory Bird Treaty Act. This included the bald eagle (*Haliaeetus leucocephalus*) and golden eagle (*Aquila chrysaetos*), as well as the Brewer's sparrow (*Spizella breweri*), Rufous hummingbird (*Selasphorus rufus*) and the Virginia's warbler (*Vermivora virginiae*).

Based on the analysis described above, the EPA initiated consultation and transmitted a Biological Evaluation to the USFWS on July 2, 2020, requesting concurrence with the conclusion that approval of the nutrient temporary standard for the Raton WWTP may affect, but is not likely to adversely affect the Mexico meadow jumping mouse (*Zapus hudsonius luteus*), piping plover (*Charadrius melodus*) and southwestern willow flycatcher (*Charadrius melodus*) in the defined action area. The USFWS concurred with the EPA's conclusion that the approval of NMED's temporary standard for Raton may affect but is not likely to adversely affect listed species through its letter dated July 21, 2020. This completed the EPA's ESA consultation requirements.