

STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION



IN THE MATTER OF PROPOSED
AMENDMENTS TO 20.6.4 NMAC

No. WQCC 17-04 (R)

New Mexico Environment Department
Petitioner.

ORDER AND STATEMENT OF REASONS FOR AMENDMENT OF REGULATIONS

This matter comes before the New Mexico Water Quality Control Commission (“Commission”) upon a petition filed by the New Mexico Environment Department (“Department”) Surface Water Quality Bureau (“Bureau”) proposing amendments to the standards for interstate and intrastate surface water codified in Title 20, Chapter 6, Part 4 of the New Mexico Administrative Code (20.6.4 NMAC). The Department proposed amendments to 20.6.4.215 NMAC and 20.6.4.801 NMAC, and the adoption of new water quality segments: 20.6.4.230 NMAC (“Perennial reaches of Tocolote creek from I-25 to Blue creek.”) and 20.6.4.810 NMAC (“Perennial reaches of Dog Canyon creek.”). See NMED Exhibit 13.

The Commission held a public hearing in this matter on Tuesday, January 9, 2018, at Mabry Hall in the Jerry Apodaca Building, 300 Don Gaspar, Santa Fe, New Mexico. The public notice for the hearing was published in the New Mexico Register on October 31, 2017. NMED Exhibit 10. The public notice was also published in the Albuquerque Journal on November 6, 2017; in the Las Vegas Optic on November 8, 2017; and in the Alamogordo Daily News on November 8, 2017. NMED Exhibit 10. The notice of hearing was provided on the Bureau’s website beginning on November 14, 2017, and distributed to 1,547 recipients on November 14, 2017, through the Bureau’s e-mail list.

At the public hearing the Commission heard technical testimony from the Department. No other party entered an entry of appearance in this matter, and there was no public comment. On January 9, 2018, the Commission, having familiarized itself with the record and the Department's technical testimony, deliberated and voted unanimously to adopt the Department's proposed amendments to 20.6.4 NMAC for the following reasons:

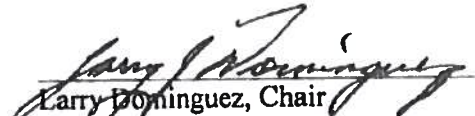
1. The Clean Water Act requires that, "wherever attainable," water quality shall provide "for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water[.]" 33 U.S.C. § 1251.
2. The Code of Federal Regulations requires each State to "specify appropriate water uses to be achieved and protected." 40 C.F.R. 131.10(a).
3. "States may . . . remove a use that is not an existing use, if the State conducts a use attainability analysis . . . that demonstrates attaining the use is not feasible because of . . . [n]aturally occurring pollutant concentrations prevent the attainment of the use[.]" 40 C.F.R. 131.10(g)(1).
4. The Commission has the authority to "adopt water quality standards for surface and ground waters of the state based on credible scientific data and other evidence appropriate under the Water Quality Act." NMSA 1978, § 74-6-4(D).
5. "The commission may remove a designated use . . . or adopt subcategories of a Section 101(a)(2) use requiring less stringent criteria only if a use attainability analysis demonstrates that attaining the use is not feasible because of a factor listed in 40 CFR 131.10(g)." 20.6.4.15(A)(1) NMAC.
6. "A use attainability analysis is a scientific study conducted for the purpose of assessing the factors affecting the attainment of a use." 20.6.4.15(A) NMAC.

7. "A use attainability analysis shall assess the physical, chemical, biological, economic or other factors affecting the attainment of a use. The analysis shall rely on scientifically defensible methods[.]" 20.6.4.15(B) NMAC.
8. The Bureau conducted use attainability analyses in accordance with 40 C.F.R. § 131.10(g) (Appendix A) to determine the most appropriate and protective aquatic life use for the perennial portions of Dog Canyon Creek in Otero County, New Mexico, and portions of Tecolote Creek in San Miguel County, New Mexico.
9. The coldwater and high quality coldwater aquatic life uses are not attainable because "naturally occurring pollutant concentrations," i.e., high water temperatures resulting from natural ambient air temperatures, "prevent the attainment of the [aquatic life] use." See 40 C.F.R. § 131.10(g)(1).
10. The use attainability analyses demonstrate that a coolwater aquatic life use is the most protective aquatic life use that is naturally attainable in these waters.
11. To implement this standards change, it is necessary to amend 20.6.4.215 NMAC and 20.6.4.801 NMAC, and to adopt two new water quality segments: 20.6.4.230 NMAC ("Perennial reaches of Tecolote creek from I-25 to Blue creek.") and 20.6.4.810 NMAC ("Perennial reaches of Dog Canyon creek.").

ORDER

By a unanimous vote of the commissioners present, the proposed changes to 20.6.4 NMAC were approved by the Commission. Title 20, Chapter 6, Part 4 of the New Mexico Administrative Code is hereby amended as set forth in NMED Exhibit 13, with any appropriate corrections of formatting or other changes necessary to file these rules with the New Mexico State Records

Center. The regulatory change as described in this Order is hereby adopted, to be effective 30 days after its filing in accordance with the State Rules Act. See NMSA 1978, §§14-4-5(D), 74-6-6(E).


Larry Dominguez, Chair
New Mexico Water Quality Control Commission

1/16/2018
Dated

CERTIFICATE OF SERVICE

I hereby certify that a copy of the **Order and Statement of Reasons for Amendment of Regulations** was sent via email on January 16, 2018, and via mail on January 17, 2018 to the following parties:

Via hand delivery and email:

John Verheul,
Assistant General Counsel
Office of General Counsel
New Mexico Environment Department
121 Tijeras Avenue NE, Ste 1000
Albuquerque, New Mexico 87102
John.Verheul@state.nm.us
Counsel for the New Mexico Environment Department

Stephen Vigil
New Mexico Attorney General's Office
Post Office Drawer 1508
Santa Fe, NM 87504
email svigil@nmag.gov
Counsel for the Environmental Improvement Board



Pam Castañeda, Commission Administrator

