

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

IN THE MATTER OF THE TRIENNIAL REVIEW)
OF STANDARDS FOR INTERSTATE AND) WQCC No.08-13 (R)
INTRASTATE SURFACE WATERS, 20.6.4 NMAC)

**PROPOSED AMENDMENTS AND STATEMENT OF BASIS FOR
AMIGOS BRAVOS PETITION**

**The 2009 Triennial Review of the New Mexico Surface Water Quality Standards
June 1, 2009**

Amigos Bravos is a statewide river conservation organization guided by social justice principles. Our mission is to protect and restore the rivers of New Mexico, and ensure that those rivers provide a reliable source of clean water to the communities and farmers that depend on them, as well as a safe place to swim, fish, and go boating. Amigos Bravos works locally, statewide and nationally to ensure that the waters of New Mexico are protected by the best policy and regulations possible. In this capacity Amigos Bravos works to make sure that New Mexico’s water quality standards are protective enough to support the diverse human and non-human uses of our state’s water resources. Amigos Bravos submits the following proposed changes and associated statement of basis to the *State of New Mexico Standards For Interstate and Intrastate Surface Waters* (20.6.4 NMAC).

*Proposed materials to be deleted are indicated by **~~bold strikethrough~~** (red in color copies) and proposed new language is indicated by **bold underlining** (blue in color copies). NMED’s proposed changes are included here as non-bolded (and non-colored) underlined and ~~strikethrough~~ text.*

20.6.4.7H(2) – Human-Made Causes / Global Warming and Climate Change

Amigos Bravos’ proposal:

20.6.4.7.H(2) “Human-Made Causes” means those causal agents that would affect water quality and are not caused by natural causes but are due to human activities including, but not limited to, point and nonpoint discharges, and global warming and climate change.

Basis:

Amigos Bravos urges the Commission to consider the future, long reaching effects of Global Warming and Climate Change on water quality in New Mexico's rivers and streams. As climate change progresses, water diversions will have larger and larger impacts on our state's rivers and streams, causing many of our traditionally perennial waters to run dry for part of the year. These waters must continue to receive strong water quality protections because, as water becomes more and more scarce, it is all the more important to ensure high quality in the water that we do have.

The State of New Mexico, prepared a 2005 Report entitled *Potential Effects of Climate Change on New Mexico* ("NM Climate Change Report") (attached as Exhibit 1) to inform its Climate Change Advisory Group. The NM Climate Change Report identified substantial impacts to: (1) water resources; (2) infrastructure (e.g., flood control, electrical power distribution, sewage, water supply, and transportation); (3) agriculture; (4) natural systems (e.g., forests, grasslands, deserts, lakes and streams); (5) outdoor recreation and related tourism; (6) environmental quality and health (e.g., from intensified ozone levels); (7) environmental justice and native peoples (because of these communities limited resources to adapt and cope with climate change). NM Climate Change Report at 1-4. All of these impacts implicate the need for strong protection of NM's waters.

To ensure that global climate change does not result in wide-scale weakening of water quality standards, Amigos Bravos urges the Commission to specifically identify global climate change as a "human-made cause" not a "natural cause" of water quality impairment. Additionally, Amigos Bravos urges the commission to consider whether water quality standards need to be strengthened or whether guidance for ensuring water quality protection should be provided to account for Global Climate Change. Fundamentally, Global Climate Change is causing – and will increasingly cause – water quality degradation, in particular relative to cumulative impacts caused by existing vectors of water quality degradation. We anticipate that these changes may require a more careful consideration of long-term, cumulative water quality impacts and the need to adjust water quality management activities accordingly.

20.6.4.7.P- Definition of Perennial

Amigos Bravos' proposal:

[UU.](2) "Perennial" when used to describe a surface water of the state means the water body **currently or historically** typically contains **or contained** water [continuously] throughout the year [in all years] except during drought conditions [; its upper surface, generally, is lower than the water table of the region adjoining the stream].

Basis:

In general, Amigos Bravos supports the Department's revised definition of "perennial," which ensures that waters that may dry up during drought conditions continue to receive adequate protections. Amigos Bravos suggests a couple of changes to the Department's language. This added language would ensure that water bodies that are impacted by climate change continue to receive the appropriate protections.

20.6.4.11.B – Critical Low Flow

Amigos Bravos' proposal:

B. Critical Low Flow: The numeric [standards] criteria set under Subsection F of 20.6.4.13 NMAC, [20.6.4.101] 20.6.4.97 through 20.6.4.899 NMAC and 20.6.4.900 NMAC may not be attainable when streamflow is less than the critical low flow due to natural causes, but narrative criteria in 20.6.4.13 NMAC will continue to apply. All applicable criteria will apply if low flow conditions are due to human-made causes. The critical low flow of a stream at a particular site shall be:

Basis:

Flow itself is a water quality standard criteria. Without flow designated uses such as irrigation and domestic and public water supply cannot be met. When human induced causes contribute to low flow conditions the standards should reflect the impacts to the attainment (or lack of attainment) of designated uses.

20.6.4.11 (D) and (E) - Mixing Zones

Amigos Bravos' proposal:

Sections D and E should be completely replaced by:

20.6.4.10 D. Water Quality in Surface Water at Point of Discharge: To ensure the protection of all attainable, designated or existing uses of the States surface waters, no discharge shall cause or contribute to the violation of any water quality criteria. All water quality standards shall be met at the point of discharge.

Should the Commission not be willing to take such an action, we also propose the following alternatives which are designed to better protect human health than the present allowance for mixing zones.

Alternative 1:

20.6.4.E.(2) The acute and chronic numeric criteria, as set out in ~~Paragraph (1)~~ Subsection I, Subsection J, and Subsection K of of

20.6.4.900 NMAC, shall be attained at the point of discharge for any discharge to the surface water of the state with a designated aquatic life use.

20.6.4.11.E(6) Only a limited mixing zone is allowed for discharges to any surface water with a designated use of public or domestic water supply; such effluents shall not cause or contribute to an exceedance of the applicable standards set forth under Sections 20.6.4.900 A. and 20.6.4.900. B. NMAC.

Alternative 2:

20.6.4.E.(2) The acute **and chronic** numeric criteria, as set out in **Paragraph (1)** Subsection I, Subsection J, and Subsection K of of 20.6.4.900 NMAC, shall be attained at the point of discharge for any discharge to the surface water of the state with a designated aquatic life use.

Alternative 3:

20.6.4.11.E(6) Only a limited mixing zone is allowed for discharges to any surface water with a designated use of public or domestic water supply; such effluents shall not cause or contribute to an exceedance of the applicable standards set forth under Sections 20.6.4.900 A. and 20.6.4.900. B. NMAC.

Basis:

The concept of mixing zones in general is in direct conflict with the purposes and goals of the Clean Water Act (CWA). A couple of the key goals of the CWA are outlined in the Act itself:

- (1) [I]t is the national goal that the discharge of pollutants into navigable waters be eliminated by 1985;
- (2) [I]t is the national goal that wherever attainable, an interim goal of water quality which provided for the protection of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983 and
- (3) [I]t is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited.

33 U.S.C. § 1251(a). Mixing zones are clearly in conflict with these goals. Indeed, nowhere in the CWA does Congress sanction the use of mixing zones. Rather, Congress' intent in passing the 1972 amendments to the CWA was to prevent the "dilution to pollution solution." *See* S. Conf. Rep. 92-1236 ("The Conference substitute specifically bans pollution dilution as an alternative to waste treatment.").

Mixing zones represent a loophole for polluters that make achieving the above goals nearly impossible. It is not legal to lower water quality past the point of meeting water quality standards (WQS) because when this happens we are compromising the uses in a portion of the water body. Mixing zones are areas where WQS are suspended and, in practice remove designated uses and criteria from portions of water bodies. The CWA does not authorize states to categorically exempt portions of water bodies from compliance with WQS. The CWA's requirements WQS state that WQS must protect the public health or welfare and enhance the quality of water. 33 U.S. C. 1313(c)(2)(A). Mixing zones are in conflict with the CWA's requirements for WQS in that mixing zones clearly do not enhance the quality of water.

Moreover, mixing zones are inconsistent with the CWA and New Mexico's antidegradation policy, NMAC § 20.6.4.8 (A) (1), which requires that "existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected in all surface waters of the state." *See also* 33 U.S.C. § 1313(d)(4)(B). EPA antidegradation regulations, which require states to adopt an antidegradation policy at least as stringent as EPA regulations, similarly admit of no exception for mixing zones. 40 C.F.R. § 131.12. EPA regulation requires that "[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected."¹ *Id.*

Furthermore, assuming *arguendo* that mixing zones were in conformance with the CWA, it is unlikely mixing zones can be used in New Mexico in a manner that is consistent with the goals of the CWA or EPA policy regarding mixing zones. EPA's policy only allows for mixing zones where the characteristics of the mixing zones can ensure that:

- mixing zones do not impair the integrity of the water body as a whole,
- there is no lethality to organisms passing through the mixing zone (see section 5.1.2, this Handbook); and
- there are no significant health risks, considering likely pathways of exposure (see section 5.1.3, this Handbook).

Environmental Protection Agency, Water Quality Handbook, § 5.1 (2007) (available at: <http://www.epa.gov/waterscience/standards/handbook/>).

In the current mixing zone regulations at 20.6.4.11(D) and (E), toxic mixing zones (mixing zones with toxic substances in them) are allowed. In addition, the current mixing zone regulation requires a continuous zone of passage around mixing zones. However,

¹ Although Amigos Bravos recognizes that EPA regulations also appear to allow for mixing zones, *see* 40 C.F.R. § 131.13, that section must be read so as to be consistent with other regulations, and more importantly, with the CWA itself. In particular, under the regulations, whether or not EPA can approve a mixing zone policy adopted pursuant to § 131.13 turns on whether the policy complies with the requirements of 40 C.F.R. §§ 131.5, which specifically requires that the standards are consistent with the CWA and protect designated uses, and 131.6, which requires an antidegradation regulation. *See* 40 C.F.R. § 131.21(b).

in New Mexico waters, where the size of even our larger rivers is not large, it is questionable whether the current mixing zone regulations can meet EPA's guidance. Given the limited size of our waters, it is unlikely that a mixing zone will "not impair the integrity of the water body as a whole;" that "there is no lethality to organisms passing through the mixing zone;" and that there are "no significant health risks." Furthermore, Amigos Bravos questions how mixing zones pursuant to New Mexico's regulation are measured, how the regulation is enforced, and whether the state requires polluters to show that a mixing zone can meet EPA's standards. It is uncertain how mixing zones are monitored by the Department and Amigos Bravos has not seen any protocol or monitoring results that examine whether or not a continuous zone of passage is indeed being provided as required by the current standards.

Amigos Bravos urges the Commission to prohibit mixing zones completely, and at the very least, to limit mixing zones by either prohibiting toxic mixing zones for all aquatic life criteria and/or prohibiting mixing zones for criteria associated with the public and domestic water supply uses in waters with those designated uses. By eliminating or restricting mixing zones the Commission will eliminate the need to implement potentially costly and difficult monitoring by the Department. New Mexico's waters are too scarce and precious to allow zones of pollution, and in particular, toxic pollution.

20.6.4.11.H - Unclassified Waters of the State –

As the *hydrology protocol* referenced in this section has yet to be developed, Amigos Bravos is uncertain as to whether a change to the language proposed by the Department is merited or how to comment on this change. Generally, Amigos Bravos proposes the inclusion of a specific public participation component to be outlined in the referenced *hydrology protocol* and in section 20.6.4.15 of these standards. In addition, Amigos Bravos proposes the following changes to the Department's proposal:

Amigos Bravos' proposal:

(2) If a use attainability analysis based on the methods in the department's *hydrology protocol* (latest edition) demonstrates to the satisfaction of the ~~department~~ **Commission** that attainment of Clean Water Act Section 101(a)(2) uses is not feasible in an ephemeral water body, ~~and~~ if the use attainability analysis receives technical approval from the regional EPA administrator, **and if public notice of the use attainability analysis has been published in a paper of general circulation 30 days prior to final Commission action to allow for the public comment and to request for a public hearing,** the department shall provide notice of the use attainability analysis and the technical approval action on its water quality standards website. The designated uses and criteria identified in 20.6.4.97 NMAC shall then be applicable to the ephemeral water body for permitting, assessment and compliance purposes. **The department shall periodically petition the commission to include these ephemeral water bodies under 20.6.4.97 NMAC.**

Basis:

Amigos Bravos' proposal changing the acting body from the "department" to the "Commission," reflects the concern that as written, the Department, rather than the Commission, is given the authority to change water quality standards by downgrading waters to the ephemeral category in 20.6.4.97 from a presumption of fishable/swimmable, as set forth in CWA section 101(a)(2). The power to change water quality standards, however, is reserved to the Commission. NM Stat. § 74-6-4(C). The Basis for Change included in the Department's Proposed Amendments seems to confuse this issue, stating that once the Department determines that the UAA shows that the water body cannot attain a marginal warmwater aquatic life use or primary contact use, and the UAA receives "technical approval" from Region 6 EPA, that the water body "will be treated as a section 97 water for permitting, compliance and assessment purposes." Discussion Draft, § 20.6.4.11.H NMAC, Basis for Change. Then, the Department proposes that at "the next triennial review or appropriate rulemaking, the Department will bring these waters to the Commission to be listed in the Standards under section 97." Id. This explanation further illustrates the error in the Department's proposal, as it allows the Department to change the status of a water body before the Commission has taken action on the matter. In addition, by treating the water as a section 97 water before the Commission has had an opportunity to act, the Department is taking away protections without approval from the Commission. This situation is not only in contravention of the Water Quality Act, section 74-6-4(C), it also provides inertia for the water body to be downgraded before the Commission is able to fully consider the matter.

Furthermore, because this action must be taken by the Commission, there should be sufficient opportunity for public participation, as required by NM Stat. § 74-6-6. This section requires that "[n]o regulation or water quality standard or amendment or repeal thereof shall be adopted until after a public hearing." NM Stat. § 74-6-6(A). That section also sets forth the requirements for a public hearing, public notice, and opportunity for the public participation.

20.6.4.12 - Compliance with Water Quality Standards

Amigos Bravos' proposal:

20.6.4.12 COMPLIANCE WITH WATER QUALITY STANDARDS:
The following provisions apply to determining compliance with 20.6.4 NMAC. for enforcement purposes; they do not apply for purposes of determining attainment of uses. The department has developed assessment protocols for the purpose of determining attainment of uses that are available for review from the department's surface water quality bureau.

Basis:

Currently section 20.6.4.12 states, “The following provisions apply to determining compliance for enforcement purposes; they do not apply for purposes of determining attainment of uses.” Because this section is entitled “Compliance With Water Quality Standards” it is assumed that the enforcement purposes are related to enforcing water quality standards. How can there be compliance with water quality standards without attainment of uses? Water quality standards are designated uses. Amigos Bravos urges the Commission to revise this section to accurately reflect the relationship between complying with water quality standards and the attainment of use.

20.6.4.12.D- Compliance with human health criteria-

Amigos Bravos’ Proposal:

D. Compliance with [~~water quality criteria for the protection of human health~~] the human health-organism only criteria shall be determined from the analytical results of **three** representative grab samples. **If any one of the samples shows an exceedance, then the human health-organism only criteria is deemed to have been exceeded, as defined in the water quality management plan.** Human health-organism only criteria shall not be exceeded.

Basis:

Amigos Bravos’ understanding is that during typical Department sampling only one grab sample is collected, yet the requirement for determining compliance with the human health criteria, as detailed in the Water Quality Management Plan is:

A minimum of three individual grab samples, separated in time by no less than 15 minutes each, shall be taken during the same sampling event from the same location. For the purpose of determining noncompliance, the analytical results of 2 or more of these samples must be greater than the applicable human health criteria. Results of all grab samples shall be recorded and reported.

Water Quality Management Plan – Work Element 10. The language in 20.6.4.12 (D) very clearly states that the “human health criteria shall not be exceeded.” This language would indicate that if only one of the three grab samples shows an exceedance than there is noncompliance. Therefore, Amigos Bravos urges the Commission to develop a protocol to better determine compliance with the human health criteria. The proposed changes suggested above more accurately reflect the strong, already existing second sentence of “human health criteria shall not be exceeded.” At the very least, if the three-sample protocol is maintained, Amigos Bravos proposes to explicitly state in the standards that three grab samples are required to be collected at the time of assessment.

20.6.4.12.I - Compliance Schedules

Amigos Bravos' proposal:

Section 20.6.4.12.I should be eliminated in its entirety:

~~**I-Compliance Schedules: It shall be the policy of the commission to allow the inclusion of a schedule of compliance in a NPDES permit issued to an existing facility. Such schedule of compliance will be for the purpose of providing a permittee with adequate time to make treatment facility modifications necessary to comply with water quality based permit limitations determined to be necessary to implement new or revised water quality standards or wasteload allocations. Compliance schedules may be include in NPDES permits at the time of permit renewal or modification and shall be written to require compliance at the earliest practicable time. 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). [20.6.4.12 NMAC - Rp 20 NMAC 6.1.1104, 10-12-00; A, 10-11-02; Rn, 20.6.4.11 NMAC, 05-23-05; A, 05-23-05; A, XX-XX-XX]**~~

In the alternative, compliance schedules should be limited to very narrow circumstances as proposed below:

~~[**I**]~~ **I**. Compliance Schedules: It shall be the policy of the commission to allow the inclusion of a schedule of compliance in a NPDES permit issued to an existing facility **when appropriate**. Such schedule of compliance will be for the **sole** purpose of providing a permittee with adequate time to make treatment facility modifications necessary to comply with water quality based permit limitations determined to be necessary to implement new or revised water quality standards **or wasteload allocations**. **In these instances, c**~~C~~**ompliance 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 no longer than 3 years after new standards have been adopted**. Compliance schedules shall also specify **enforceable** milestone dates so as to measure progress towards final project completion (e.g., design completion, construction start, construction completion, date of compliance). [20.6.4.12 NMAC - Rp 20 NMAC 6.1.1104, 10-12-00; A, 10-11-02; Rn, 20.6.4.11 NMAC, 05-23-05; A, 05-23-05; A, XX-XX-XX]

Basis:

The CWA unequivocally creates a mandatory duty to comply with enforceable water quality based effluent limitations (“WQBELs”) by July 1, 1977:

In order to carry out the objectives of this chapter, there shall be achieved . . . *not later than July 1, 1977*, any more stringent limitations necessary to meet water quality standards . . . established pursuant to any State law . . . or required to implement any applicable water quality standard established pursuant to this chapter.

CWA § 301(b)(1)(c), 33 U.S.C. § 1311(b)(1)(C) (emphasis added). As a result of Congress’s inclusion of this clear deadline, numerous courts have held that neither the EPA nor a state has the authority to extend the deadline for compliance set forth in the CWA. *See State Water Control Board v. Train*, 559 F.2d 921, 924 (4th Cir. 1977) (“Section 301(b)(1)'s effluent limitations are, on their face, unconditional.”); *Bethlehem Steel Corp. v. Train*, 544 F.2d 657, 661 (3rd Cir. 1976) *cert. denied sub nom. Bethlehem Steel Corp. v. Quarles*, 430 U.S. 975 (1977) (“Although we are sympathetic to the plight of Bethlehem and similarly situated dischargers, examination of the terms of the statute, the legislative history of [CWA] and the case law has convinced us that July 1, 1977 was intended by Congress to be a rigid guidepost.”). This point is reinforced by Congress’s adoption of CWA section 301(i), which specifically allowed for a limited extension of the July 1, 1977 deadline for publicly owned treatment works. CWA § 301(i)(1)-(2), 33 U.S.C. § 1311(i)(1)-(2); *see also United States v. Homestake Mining Co.*, 595 F.2d 421, 427-28 (8th Cir. 1979). Had Congress wanted to extend the date for compliance for other categories of dischargers, it could have done so for them in a similar fashion. CWA regulations also mandate compliance by CWA deadlines: “Any schedules of compliance under this section shall require compliance as soon as possible, but *not later than the applicable statutory deadline* under the CWA.” 40 C.F.R. § 122.47; *see also* 40 C.F.R. § 124.55(f) (“Nothing in this section shall affect EPA's obligation to comply with § 122.47. *See* CWA section 301(b)(1)(C).”).

The CWA makes no exception to the deadline for compliance even if the water quality standards used to set the WQBELs are established after July 1, 1977. Rather, Congress anticipated that new water quality standards would be set by requiring states to review and revise their water quality standards every three years. *See* CWA § 303(c), 33 U.S.C. §1313(c). Nevertheless, Congress did not draw a distinction between WQBELs designed to meet water quality standards adopted before July 1, 1977 and those after that date. Congress’s requirements are consistent with the goals of the CWA: to eliminate the discharge of pollutants into navigable waters by 1985 and wherever possible to make the nations’ waters fishable and swimmable. CWA § 101, 33 U.S.C. § 1251. Although we have unfortunately failed to meet those goals yet, the CWA still requires compliance with these mandates in furtherance of Congress’s stated goals.

Alternatively, if the Commission decides to allow compliance schedules in its standards, Amigos Bravos urges the Commission to limit compliance schedules so as to ensure that water quality standards are indeed met at the earliest practicable time. Under the current system a water quality standard could be changed during a triennial review and in some

cases it would not have to be met under permit conditions for another 8 years. This is an unacceptable length of compliance time. For example, a permittee could receive a new permit immediately prior to new standards being put in place, they would then have 5 years of coverage under their old permit (and old standards), and 3 years of a compliance period when the new one is written. Amigos Bravos urges NMED to address this unacceptably long period (up to 8 years) of noncompliance with state water quality standards. Amigos Bravos' experience is that EPA typically allows at least 3 years of non-compliance with a new water quality standard. *See* 40 C.F.R. § 122.47(a)(2) (“a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge”).

In addition, the current New Mexico Water Quality Standards state at 20.6.4.12(J) that the WQCC will allow compliance schedules on a case-by-case basis. However, because EPA issues NPDES permits in New Mexico, there is no provision for case-by-case approval by the WQCC. Rather, the standard provides a blanket allowance for EPA to issue compliance schedules. If the Commission decides to allow for compliance schedules, it should include specific criteria in the standards that EPA must consider to ensure that the compliance schedule meets the Commission's goal of limiting compliance schedules to a case-by-case basis.

One way to achieve this goal would be to amend the language so that it is consistent with EPA regulations; so changing “case-by-case” to “when appropriate.” EPA regulations limit the use of schedules of compliance to certain, limited situations. 40 C.F.R. § 122.47(a). First, compliance schedules are available only when necessary to comply with new or revised water quality standards. *Id.* Second, a compliance schedule can be issued only “when appropriate.” *Id.* Finally, a schedule of compliance must ensure compliance “as soon as possible” *Id.* EPA's “when appropriate” language is similar to New Mexico's “case-by-case basis.” One way to make the section more consistent would be to provide that compliance schedules are to be issued only “when appropriate.” The Commission could then include some of the “appropriateness” factors used by EPA. *See* California Permit Quality Review Report on Compliance Schedules (Oct. 31, 2007) (“EPA Report”); *see also* Memorandum from James Hanlon to Alexis Strauss (May 10, 2007) (“Hanlon Memo”) (attachment to EPA Report) (attached as Exhibit 2). The Hanlon Memo laid out four factors to determine whether a compliance schedule is “appropriate” under 40 C.F.R. § 122.47(a): (1) “how much time the discharger has already had to meet the WQBEL(s) under prior permits”; (2) “the extent to which the discharger has made good faith efforts to comply with the WQBELs and other requirements in its prior permit(s);” (3) “whether there is any need for modifications to treatment facilities, operations or measures to meet the WQBELs; and (4) “if so, how long would it take to implement the modifications to treatment, operations or other measures; or whether the discharger would be expected to use the same treatment facilities, operations or other measures to meet the WQBEL as it would have used to meet the WQBEL in its prior permit.” Hanlon Memo at ¶ 8. Finally, the CWA itself allows for a compliance schedule only if EPA can ensure that the compliance schedule will lead to compliance with an effluent limitation to meet water quality standards by the end of the compliance period.

33 U.S.C. § 1362(17); 33 U.S.C. § 1311(b)(1)(C). In addition, the EPA Report notes that “an adequate discussion of the ‘appropriateness’ of the compliance schedules in light of the factors identified [in the Hanlon Memo]” is necessary to determine whether a compliance schedule is in fact appropriate.

20.6.4.13.M - Biocriteria

Amigos Bravos supports the Department’s proposed narrative biocriteria in order to protect biological integrity. While establishing narrative biocriteria is a very good start, Amigos Bravos believes that strong biocriteria, both narrative *and* numeric, are essential for protecting the health of New Mexico’s rivers and other waterbodies. We urge the Commission to direct the Department to prioritize developing *both* types of biocriteria.

20.6.4.13.N – Flow

Amigos Bravos’ proposal:

N. Flow: If waters of the state are not attaining designated uses due to lack of adequate flow they shall be considered impaired and appropriate planning documents and steps shall be taken.

Basis:

In many stretches of river in New Mexico, the applicable criteria are not adequately protecting the designated uses because of lack of flow. Amigos Bravos recommends that the state consider including a general criterion for flow in the standards to meet designated uses. Implementation of this general criterion will take some work and guidelines will need to be developed to identify the appropriate adequate flow for each use. For example to meet the designated use of irrigation, water only needs to be flowing during irrigation season and to meet the wildlife habitat use, flow may not be necessary year round as long as there are pools remaining to provide drinking water to wildlife. EPA regulations require that states set criteria that are “necessary to protect the uses”. 40 C.F.R. § 131.2. Seasonal flow is essential to attain the use of irrigation and thus flow is “necessary to protect the uses.” Many other states have implemented flow criteria to protect the designated uses of their waters. For example, both the states of Washington and Minnesota have adopted flow criteria.

20.6.4.15 - Use Attainability Analysis

Amigos Bravos’ proposal:

20.6.4.15 USE ATTAINABILITY ANALYSIS:

A. A use attainability analysis is a scientific study [~~that shall be~~ conducted [~~only~~] for the purpose of assessing the factors affecting the attainment of a use. Whenever a use attainability analysis is conducted, it

shall be subject to the requirements and limitations set forth in 40 CFR Part 131, Water Quality Standards; specifically, Subsections 131.3(g), 131.10(g), 131.10(h) **and** , 131.10(j), **131.20(a), and 131.20(c)** shall be applicable.

(1) ~~[Any person who proposes to classify, or reclassify to]~~ The commission may remove a designated use, establish subcategories of a designated use with less stringent criteria~~[, a surface water of the state with designated uses that do not include the]~~ or exclude a use[s] specified in Section 101(a)(2) of the federal Clean Water Act from a surface water of the state ~~[must conduct]~~ 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). Section 101(a)(2) uses, which refer to the protection and propagation of fish, shellfish and wildlife and recreation in and on the water, are also specified in Subsection B of 20.6.4.6 NMAC.

(2) A designated use cannot be removed if **is an existing use unless a use requiring the same or more stringent criteria is designated, prohibited by 40 C.F.R. § 131.10(h).**

~~[(3) A use attainability analysis or an equivalent study approved by the department and the regional administrator must be conducted to remove any non-existing designated use from any classified waters of the state.]~~

(3) Any water body segment with water quality standards that do not include the uses specified in section 101(a)(2) of the federal Clean Water Act shall be reexamined every three years to determine if any new information has become available.

B. 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 such as, but not limited to, the methods described in the following documents:.....

C. There shall be at least 30 days for the public to comment and to request a public hearing before the Department or Commission finalizes a UAA.

Basis:

Even if there has been a UAA conducted on a water body segment that downgrades the uses of segment to uses less protective than those specified in section 101(a)(2) of the Clean Water Act, federal regulations at 40 C.F.R. section 131.20(a) require that these water bodies be reexamined every three years to determine if any changes have occurred in the water body or new information has become available that would create conditions where 101(a)(2) uses are attainable. The language proposed above in (A)(3) comes almost verbatim from 40 C.F.R. section 131.20(a).

The language proposed in (C) above comes directly from the public participation requirements in the State of New Mexico's Continuing Planning Process (CPP).

20.6.4.97 and 98 - Contact Standards for Intermittent and Perennial Waters

Amigos Bravos supports the Department's proposal to apply primary contact to perennial and intermittent waters. This proposal correctly implements CWA requirements to provide "fishable/swimmable" water quality protections.

20.6.4.100-899 Primary Contact

Amigos Bravos supports the Department's proposal to assign waters that are protected by primary contact criteria the primary contact use. The policy of having secondary contact listed as a designated use and then have site-specific primary contact standards should be stopped. Waters that have primary contact as an existing use should also have it as a listed designated use. The former policy causes undue confusion to the public, and we would assume to the regulators and policy makers as well. This practice makes it especially difficult to review the 303(d) list because there is no indication what is meant when a segment says that secondary contact is "fully supported". There is no way for the public to know if the primary contact criterion is being supported.

Amigos Bravos' proposal:

20.6.4.115 RIO GRANDE BASIN - The perennial reaches of Rio Vallecitos and its tributaries, and perennial reaches of Rio del Oso and perennial reaches of El Rito creek above the town of El Rito.

A. Designated Uses: domestic water supply, irrigation, high quality coldwater aquatic life, livestock watering, wildlife habitat and ~~[secondary]~~ primary contact; public water supply on the Rio Vallecitos and El Rito creek.

B. Criteria:

[~~(1) In any single sample: specific conductance 300 μ mhos/cm or less, pH within the range of 6.6 to 8.8 and temperature 20°C (68°F) or less.] The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses ~~[listed above in Subsection A of this section]~~, except that the following segments specific **critierion criteria applies apply**: specific conductance 300 μ S/cm or less; **the monthly geometric mean of E.coli 126 cfu/100mL or less; single sample of 235 cfu/100mL or less**~~

[~~(2) The monthly geometric mean of E. coli 126 cfu/100 mL or less; single sample 235 cfu/100 mL or less (See Subsection B of 20.6.4.14NMAC.)~~]

Basis:

The exceptions to Amigos Bravos' support of the Department's primary contact proposal is in cases where the segment specific criteria that applied previously was more protective than the criteria that are associated with primary contact. For example, 20.6.4.115 currently has a designated use of secondary contact but has segment specific criteria for E.coli (monthly geometric mean of 126cfu/100mL or less; single sample 235cfu/100mL or less) that is more protective than the criteria associated with the

primary contact use (monthly geometric mean of 120cfu/100mL or less; single sample 410 cfu/100mL). For section 20.6.4.115 and any other segment that had the more protective segment specific standards and now only has the primary contact use standards we propose retaining the segment specific standards.

20.6.4.105, 106, and 114 - Standards for Transuranic Alpha-Emitting Elements, Tritium, Cesium and Strontium –

Amigos Bravos’ Proposal:

20.6.4.105, 20.6.4.106, 20.6.4.114 RIO GRANDE BASIN:

B. Criteria:

(1) The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses,.....the following criteria are applicable to the public water supply use:

| Radionuclide | pCi/L |
|---|--------------------------------|
| Americium-241, <u>243</u> | 1.9 <u>.15</u> |
| Cesium-137 | 6.5 |
| Plutonium- <u>230</u> , 239 and 240 | 1.5 <u>.15</u> |
| Strontium-90 | 3.5 |
| Tritium | 4,000 <u>400</u> |
| <u>Neptunium-237</u> | <u>.15</u> |
| <u>Curium - 244</u> | <u>.15</u> |
| <u>Combined Concentration for all long-lived alpha emitting transuranic radionuclides (Plutonium 230, 239, and 240, Americium 241, Neptunium-237, and Curium 244)</u> | <u>.15</u> |

| Radionuclide | pCi/L |
|--------------|------------|
| Cesium-137 | <u>6.5</u> |

| | |
|---|--------------------------------|
| <u>Strontium-90</u> | <u>3.5</u> |
| <u>Tritium</u> | 4,000 <u>400</u> |
| <u>Combined Concentration for all long-lived alpha emitting transuranic radionuclides (Plutonium 230, 239, and 240, Americium 241, Neptunium-237, and Curium 244)</u> | <u>.15</u> |

OR:

Basis:

Amigos Bravos supports the Department’s proposal to include criteria for plutonium 239 and 240, americium 241, Cesium 137, Strontium 90, and tritium in order to protect the public water supply use along the Rio Grande in segment 20.6.4.114. In addition, Amigos Bravos proposes that similar standards be added to segment 20.6.4.105, and 20.6.4.106. In the Department’s original proposal, dated August 11, 2008, plutonium, americium and tritium standards were proposed for segments 20.6.4.105 and 106 under the same basis for change as listed for 20.6.4.114. Specifically, the Department in their 8/11/08 document stated that standards for these parameters are needed in the Rio Grande downstream from Los Alamos National Laboratory (LANL) because discharges from LANL “could threaten public drinking water supplies.” The public drinking water supply use is being proposed by the Department for all of these segments and since all of these segments are downstream from LANL, the risk to public water supplies exists in all four of these segments. Therefore the standards should apply to all four segments.

In order to adequately protect public health and the environment, scientific research supports lowering the proposed standard even further. Amigos Bravos urges the Department to lower the proposed plutonium standard from 1.5 picocurie per liter (pCi/L) to 0.15 pCi/L; the americium standard from 1.9 pCi/L to 0.19 pCi/L; and the tritium standard from 4,000 pCi/L to 400 pCi/L. The latter is the tritium guideline adopted by the State of California.

Current research suggests that we need to look at the bone surface as the critical impacted organ when setting a water quality standard for plutonium. In 2004 the state of Colorado adopted more protective standards for plutonium and americium of 0.15 pCi/liter for surface water in the context of Rocky Flats clean-up, a situation which is similar to that for Los Alamos in that the latter also has discharged these radionuclides

into the environment. They changed their standards from 15 pCi/L to .15 pCi/L for plutonium on the basis that “The 15 pCi/L dose-based approach was calculated using a ‘reference man’ and considered exposure during his working life. It was an approach designed to address questions related to occupational exposure. It did not consider sex, age and organ specific factors over a lifetime. In contrast, the new slope factor methodology , used in EPA’s 1989 Risk Assessment Guidance for Superfund Sites, is more complete, more applicable to a general population and has become the standard practice for calculating risk.” (Colorado Department of Public Health and Environment. Water Quality Control Commission. The Basic Standards and Methodologies for Surface Water (5 CCR 1002-31)) The Colorado Water Quality Control Commission also adopted a .15 pCi/L standard for Americium during the same hearing. Amigos Bravos urges the Commission to adopt these more protective standards as well.

In addition, or as an alternative as detailed above, the Amigos Bravos urges the Commission to adopt a standard for the combined concentration of long-lived alpha emitting transuranic radionuclides (Plutonium 230, 239, and 240, Americium 241, Neptunium-237, and Curium 244). Transuranic radionuclides are radioactive isotopes that have atomic numbers greater than uranium. According to the report “Bad to the Bone Analysis of the Federal Maximum Contaminant Levels for Plutonium-239 and Other Alpha-Emitting Transuranic Radionuclides in Drinking Water “ by Arjun Makhijani, Ph.D., “a combined maximum contaminant level for alpha-emitting, long-lived transuranic radionuclides of 0.15 picocuries per liter” should be set, “[i]f only one of the radionuclides in question were present, then the limit for that radionuclide would be 0.15 picocuries per liter. The radionuclides included are: neptunium-237, plutonium-238, plutonium-239, plutonium-240, plutonium-242, americium-241, and americium-243.”

20.6.4.114- Klauer Spring

Amigos Bravos’ proposal:

20.6.4.114 RIO GRANDE BASIN - The main stem of the Rio Grande from the ~~[headwaters of]~~ Cochiti ~~[reservoir]~~ pueblo boundary upstream to Rio Pueblo de Taos, Embudo creek from its mouth on the Rio Grande upstream to the ~~[junction of the Rio Pueblo and the Rio Santa Barbara]~~ Picuris Pueblo boundary, the Santa Cruz river ~~[below]~~ from the Santa Clara pueblo boundary upstream to the Santa Cruz dam, the Rio Tesuque ~~[below the Santa Fe national forest]~~ except waters on the Tesuque and Pojoaque pueblos, and the Pojoaque river ~~[below Nambé dam]~~ from the San Ildefonso pueblo boundary upstream to the Pojoaque pueblo boundary, and Klauer Spring.

A. Designated Uses: irrigation, livestock watering, wildlife habitat, marginal coldwater aquatic life, primary contact and warmwater aquatic life; domestic water supply on Klauer Spring and public water supply on the main stem Rio Grande.

Basis:

Amigos Bravos proposes a domestic water supply use and associated criteria for Klauer Spring, located along the Rio Grande about a mile downstream from the confluence with the Rio Pueblo de Taos. The spring seeps out of the side of the canyon and creates a small perennial flow for about 100 feet before it flows into the Rio Grande. Numerous residents of Taos County get their drinking water from this spring. People bring tanks and fill them up at the spring and cart them back to their homes for drinking, cooking and bathing. Presently Klauer Spring is not protected with domestic water supply standards. Because domestic water supply is an existing use (as people are definitely using the spring for drinking water), and the CWA requires that all existing uses be protected with water quality standards, it is appropriate to apply domestic water supply criteria to the Klauer Spring.

20.6.4.128 - Los Alamos Intermittent and Ephemeral Waters

Amigos Bravos' proposal:

20.6.4.128 RIO GRANDE BASIN - Ephemeral and intermittent portions of watercourses within lands managed by U.S. department of energy (DOE) within LANL, including but not limited to: Mortandad canyon, Cañada del Buey, Ancho canyon, Chaquehui canyon, Indio canyon, Fence canyon, Potrillo canyon and portions of Cañon de Valle, Los Alamos canyon, Sandia canyon, Pajarito canyon and Water canyon not specifically identified in 20.6.4.126 NMAC. (Surface waters within lands scheduled for transfer from DOE to tribal, state or local authorities are specifically excluded.)

A. Designated Uses: livestock watering, wildlife habitat, **limited** aquatic life and secondary contact.

Basis:

Los Alamos National Laboratory (LANL) has received preferential treatment in that all intermittent waters on LANL property are given weaker protections (those associated with the limited aquatic life use) than all other intermittent waters in the state (which receive the aquatic life use). If EPA had issues with applying limited aquatic life to ephemeral waters in section 20.6.4.97, than they certainly would have a problem with applying the limited aquatic life use to both ephemeral and intermittent waters as is done in section 20.6.4.128. Amigos Bravos' proposal consistently applies the standards by applying the aquatic life use to 20.6.4.128. If a UAA analysis is conducted that shows that the aquatic life use is not attainable in some ephemeral waters under this segment then a separate segment should be created for those waters. At this point, to ensure that all waters are given "fishable/swimmable" protections an aquatic life use is necessary for all waters in 20.6.4.128. The US Fish and Wildlife provided testimony in the 2004 Triennial Review that showed many species of aquatic life thrived in these stretches. In some cases these species are more sensitive to pollutants than species that are found in perennial streams.

20.6.4.900(H)(4)- Coolwater Criteria-

Amigos Bravos is concerned about the Department's addition of "coolwater" criteria. Although, Amigos Bravos understands that the Department is trying to insert criteria for species that legitimately need the conditions outlined in the coolwater criteria, the addition of such criteria without additional benchmarks for its use presents an opportunity for abuse. Already, the water quality standards allow for five categories of temperature criteria: high quality coldwater, coldwater, marginal coldwater, warmwater, and marginal warmwater. Although in fact the coolwater use proposed by the Department proposes the same temperature, dissolved oxygen and pH criteria as the marginal coldwater use, so their appears to be no difference in the new use from marginal coldwater use unless different criteria in 20.6.4.900.J are going to be proposed at a future date. Given Amigos Bravos existing concerns about the already existing categories, the addition of yet another is troublesome, as it invites the Department to classify a water body into whatever category it presently fits- and with six potential categories, it is certain to fit into one- rather than classifying for the appropriate designated use, i.e. its historical or appropriate use, and then working toward achieving that condition. In particular, as climate change causes New Mexico's waters to become more limited, and thus more susceptible to temperature change, Amigos Bravos is concerned that the addition of another category will justify categorizing what are appropriately coldwater streams as coolwater.

Amigos Bravos recommends that if a coolwater use is included, that such a use be allowed only on a segment-specific basis, or that requirements are included so that the designation can be used only where historical data support such a use. Additionally, Amigos Bravos recommends that marginal coldwater be eliminated if a coolwater use is added.

20.6.4.900(H)(7) - Limited Aquatic Life Use

Amigos Bravos' proposal:

~~**[(6)](7) Limited Aquatic Life: [Criteria shall be developed on a segment-specific basis.] The acute aquatic life criteria of Subsections I and J of this section [shall] apply to this subcategory. Chronic aquatic life criteria do not apply unless adopted on a segment-specific basis. Human health-organism only criteria apply only for persistent pollutants unless adopted on a segment-specific basis.**~~

Basis:

Amigos Bravos believes that the designated use of "limited aquatic life," set forth at 20.6.4.900(H)(7), is ambiguous and confusing. Instead, Amigos Bravos believes proposes that we return to the pre-2005 policy of setting segment specific uses in the rare case where the other aquatic life uses are not attainable. For instance, in the case of Sulphur Creek, Section 20.6.4.124 it would be simple to say under paragraph B(3) that, except for subsections I and J of 20.6.4.900, the chronic aquatic life criteria do not apply. The

limited aquatic life use adds one more layer of confusion to the standards requiring members of the public to flip back and forth between the segment and the back of the standards. In addition, the limited aquatic life use could be abused to lower water quality standards. It is more appropriate to make segment specific changes in cases where the natural conditions have resulted in an impairment associated with either the chronic or acute aquatic life criteria. This method would allow for more fine tuned standards. For example, in some cases it may be that none of the chronic life criteria are attainable, and therefore all the criteria could be listed as not applying, but, in some other cases, it may be that only a couple of the chronic life criteria do not apply and in those cases these constituents could be listed individually. Returning to the pre-2005 policy also ensures that water quality standards are applied equitably and that standards are modified only when natural conditions necessitate such changes. Getting rid of the limited aquatic life use would not require a large overhaul to the standards as presently only three segments have the limited aquatic life designated use.

EPA's disapproval of the use of the limited aquatic life use for ephemeral waters is consistent with this point. EPA noted that "this limited use does not 'serve the purposes of the [CWA], as defined in CWA sections 101(a)(2) and 303(c)." See Discussion Draft, § 20.6.4.97 NMAC, Basis for Change. Although NMED has addressed this concern in part by requiring that ephemeral waters shall be classified as such by a hydrology protocol, it did not address the concern that such waters automatically include a limited aquatic life use, when they may qualify for a protective standard. Organisms in ephemeral waters are often especially sensitive to changes, and thus ensuring that chronic life criteria are applied can be crucial to the survival of those species. As such, a separate limited aquatic life designation is inappropriate. At most, the criteria specified in the limited aquatic life designation should be applied on a segment-specific basis.

20.6.4.900 (I) - Hardness Table for Acute and Chronic Criteria for Metals-

Amigos Bravos supports the Department's proposal for 20.6.4.900.I. The proposed table in 20.6.4.900.I will greatly help the public to interpret hardness dependent water quality data.

20.6.4.900 (J) - Domestic Water Supply Criteria

Amigos Bravos opposes the Department's proposal to change, and in most cases weaken, the criteria for the domestic water supply use. If the Department's proposal for this section is adopted, Amigos Bravos proposes in addition a new designated use of "[Water and Organism Consumption](#)" that would apply to all waters that have both a domestic water supply and aquatic life use designation. This designated use would have a new column in the table at 20.6.4.900.J. and the criteria would be the current (prior to the Department's proposed changes) numeric criteria listed under the domestic water supply use. A scenario where there is both the domestic water supply and water and organism consumption use would best protect public health.

Basis:

Amigos Bravos opposes the Department's proposed weakening the domestic water supply criteria because the proposed changes disregard the potential health effects to people who both drink the water and eat fish from the same water source. The EPA recommended criteria for consumption of water plus organism (these were the standards that the WQCC currently applies to the domestic water supply use) should continue to apply to the domestic water supply use. These criteria can be found in the November 2002 EPA Human Health Criteria Calculation Matrix. To Amigos Bravos' knowledge, every water that has a domestic water supply use also has an aquatic life use and thus it is likely that some people both fish and drink from these waters. In fact, it is much more likely that both uses are conducted on the same waters than not. Many of the waters where people fish are also waters where people hike and camp and consume water. To protect these existing uses the more sensitive criteria for consumption of water and organism should apply. In addition, if protections are downgraded from consumption of water and organisms to only protecting for consuming water, a UAA is required. To Amigos Bravos' knowledge, UAAs for the multiple segments impacted have not been conducted.

20.6.4.900 (J) - Detection Limits-

Amigos Bravos is concerned about water quality analysis methods that have detection limits that are orders of magnitude above the water quality standard. For example, the most common PCB analysis method has a detection level of 1 ug/L when the water quality standard for human health is .00064 ug/L. When a sample is taken and analyzed using methods that are not sensitive enough to determine if a water quality standard is being met, and then, when there is a non-detect, used to make the determination that the designated uses are being fully supported, it is misleading to the public. At the very least, a column should be added in 20.6.4.900 that lists the detection limit of the method of analysis for each constituent. This would at least allow for the public to know if we have the capability to determine if the standard is being met.

20.6.4.900 (J) - Public Water Supply Use

Amigos Bravos urges the commission to adopt use-specific criteria for the public water supply use. Many contaminants listed in 20.6.4.900.J are not removed with conventional treatment practices and thus criteria to protect for this use, taking into account the effectiveness of standard treatment technology, should be adopted.

20.6.4.900 (J) - Perchlorate Standard Needed –

To protect public health and safety, New Mexico should adopt a Perchlorate standard of 1 ug/L for domestic water supply. Criteria for irrigation, wildlife habitat and livestock watering should be developed as well. New Mexico has increasing problems with perchlorate contamination as is evidenced by the numerous perchlorate hits in both ground and surface water in the past ten years. In the spring of 1999, perchlorate was identified at HAFB when USGS collected a surface water sample from the Lost River for

the National Park Service and found perchlorate at 16,000 ug/L. In 1995 perchlorate was found in shallow alluvial groundwater in Los Alamos at 180 ug/L. At Fort Wingate, perchlorate was found in one groundwater monitoring well at 2,860 ug/L. Although there is currently no federal drinking water standard for perchlorate, the EPA has considered a reference dose of 1ug/L for perchlorate in drinking water. New evidence shows that many Americans are now consuming large quantities of perchlorate in the vegetables that they eat. It is reasonable to assume that the level of perchlorate that is safe in drinking water will have to be lowered as the amount of perchlorate we ingest from others sources increases. Vegetables irrigated with perchlorate contaminated water concentrates the contaminant by many factors. For example lettuce concentrates perchlorate by an average factor of 65 at levels found in water of 10 to 130 ppb.

Protections for Acequias

Amigos Bravos' proposal:

20.6.4.106 Acequia Madre – Los Padillas –

A. Designated Uses: irrigation, livestock watering, wildlife habitat, and secondary contact.

B. Numeric criteria for temperature, dissolved solids, dissolved oxygen, sediment or turbidity shall not apply to this segment. The human health criteria for cancer causing or persistent pollutants shall apply to this segment.

20.6.4.107 Don Gabino Andrade Community Acequia

A. Designated Uses: irrigation, livestock watering, wildlife habitat, and secondary contact.

B. Numeric criteria for temperature, dissolved solids, dissolved oxygen, sediment or turbidity shall not apply to this segment. The human health criteria for cancer causing or persistent pollutants shall apply to this segment.

Basis:

While historically water quality standards have not applied to acequias or irrigation ditches, the reality is that many New Mexican families use our state's ditches and acequias as places to go fishing, swimming, and, in one outlandish story from the South Valley of Albuquerque, water skiing! In the Los Padillas area of Albuquerque there are people swimming almost every weekend in the Acequia Madre. In places like Albuquerque, where much of the Rio Grande is fenced off, prohibiting public access, many families picnic next to and recreate in acequias. There are many existing uses of these waters that need protections to ensure public safety and health. The exemption, listed under 20.6.4.11(I)(2), exempting pollution caused by the “reasonable operation of irrigation and flood controls facilities” from numeric criteria for temperature, dissolved solids, dissolved oxygen, sediment or turbidity could remain intact and could potentially be expanded to always apply to acequia/ditch waters. Protections for E.coli and toxic pollutants such as PCBs and heavy metals are needed in acequia/ditch waters to protect public health and safety in New Mexico. While all acequias have the existing use of at

least secondary contact as the very act of irrigating with acequia waters requires some human contact, Amigos Bravos is suggesting starting slowly by identifying acequias that are used extensively by the public for other contact activities such as fishing, swimming, wading, etc. and applying appropriate segment specific standards.

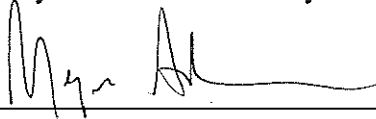
Pharmaceuticals and Personal Care Products (PPCPs)

Amigos Bravos supports the development of new water quality standards for Pharmaceuticals and Personal Care Products (PPCPs). EPA's lack of action to protect public health from PPCPs by not setting national standards means that the Department and the Commission must take responsibility to protect New Mexico water quality and public health by developing and proposing PPCPs standards. Amigos Bravos urges the Commission to adopt water quality standards for key PPCPs, such as sulfamethoxazole, loxacin, caffeine, DEET, TDCPP, and tris (2-chlorethyl) phosphate, all of which have been detected in New Mexico's waters. We recommend that the Department test the river at the parts per trillion level for chemicals including but not limited to: chemotherapy drugs, hormones, antidepressants, anti-epileptics, antibiotics, pain relievers, blood pressure diuretics, and plasticizers. Alternatively, a list of chemicals for which to test could be derived from demographics of most commonly used PPCPs in NM. We recommend the prioritization of hormones & plasticizers (such as bisphenol-A) which can be endocrine disruptors at very low doses. A resource to calculate health based screening levels for detected contaminants that do not have US EPA maximum contaminant levels could be the USGS' collaborative project with the US EPA New Jersey Department of Environmental Protection and Oregon Health and Science University. Conducting screening level testing will help NMED identify pollutants of concern and assist in developing water quality standards in the future.

Nutrients

NMED should develop water quality based nutrient standards to protect New Mexico's waters. Under the current system wastewater treatment plants are only required to treat to secondary treatment technology limits. This practice needs to be stopped, especially in some of our smaller streams where there is little to no dilution.

Respectfully submitted this 1st day of June 2009.



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CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2009, I served the above Amigos Bravos' Proposed Amendments and Statement of Basis for Amigos Bravos Petition via first class mail to:

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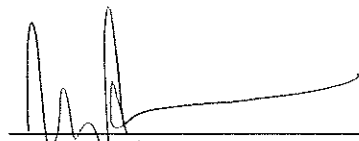
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