

June 17, 2026

*Sent via public comment portal for WQCC 25-74(R)*

New Mexico Water Quality Control Commission  
1190 S. St. Francis Drive  
Santa Fe, New Mexico 87501

Re: WQCC 25-74(R): Definition of “tribal water quality standards” in Proposed Amendments to 20.6.2 NMAC and 20.6.5 NMAC

Dear Commissioners,

New Mexico is leading the nation in response to federal rollbacks of clean water protections by establishing a state-led surface water quality permitting program. The Land of Enchantment is arguably the most vulnerable state, with up to 95% of rivers and streams and 88% of wetlands no longer protected under the Clean Water Act—protections that have allowed industry, communities, and agriculture to thrive for over 50 years. Every single one of our districts has impacted waters.

Passing SB 21 in 2025, the Pollutant Discharge System Elimination Act, was a critical step toward ensuring the water our communities depend on is clean and safe. We were proud to support it by voting for it in committee, speaking on its behalf on the floor, and voting for its passage. This bill set the framework for how the state-led surface water quality permitting program will operate and underwent significant scrutiny by the legislature, backed up by many conversations with the bill sponsors and stakeholders. Now the Water Quality Control Commission (“WQCC”) must take the next step to make this program a reality.

As Native legislators who supported SB 21 and who represent Tribal communities across New Mexico, we are concerned that some proposed rule language would narrow protections the Legislature deliberately included in statute.

SB 21 acknowledges the connections Tribes have to waters across the state by requiring the New Mexico Environment Department (NMED) to deny permit applications for permits discharging to state waters if:

“the surface water discharge would cause or contribute to water contaminant levels in excess of a downstream state or tribal water quality standard.”<sup>1</sup>

And, likewise, in implementing the program for discharges to Waters of the United States, NMED must:

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<sup>1</sup> NMSA 1978, § 74-6-5(E)(4).

“deny a permit or request for permit coverage if the discharge would cause or contribute to a pollutant in excess of a downstream state or tribal water quality standard”<sup>2</sup>

This plain language in SB 21 makes it clear that Tribal water quality standards shall be protected as part of the state-led surface water quality permitting program. We write to express concern about proposed language that erodes these protections and contradicts the language in SB 21.

Because neither the Water Quality Act nor the New Mexico Pollutant Discharge Elimination Act, the two laws encompassed in SB 21, define Tribal water quality standards, we understand NMED’s need to further define this term in the rules. Doing so will provide clarity for NMED, other state agencies, the regulated community, and the public. But this definition should be approached carefully in order to be aligned with the broad protections included in the statutes. It is most appropriate for the WQCC to adopt a definition that is developed with Tribal entities. The Pueblos of Laguna and Jemez proposed specific language that NMED adopted in its rebuttal case:

“‘tribal water quality standards’ means standards established by the governing body pursuant to Indian nation, tribal, or pueblo law.”<sup>3</sup>

We ask that the WQCC include this definition of Tribal water quality standards, proposed by the Pueblos of Laguna and Jemez and adopted in NMED’s rebuttal, in the final rules at 20.6.2 and 20.6.5 NMAC. This definition provides sufficient clarity.

We understand that other parties in the rulemaking have proposed limitations that would erode the broad protection required in SB 21. These proposals request the WQCC to require Tribes to undergo a federal process through the Environmental Protection Agency (EPA) called “treatment as a state” (TAS). This process provides an avenue for the EPA to treat federally recognized Tribes in the same manner as the agency does Tribes to implement and manage a variety of federal environmental programs, as well as to provide federal grant funds. We ask the WQCC to summarily reject these proposals. The TAS process is a burdensome one for Tribes, one that requires significant legal and technical capacity and which, in the best of times, can take the EPA multiple years to review and approve. Requiring Tribes to apply for and obtain TAS status places a needless and exceptionally burdensome task upon Tribes that would likely result in only Tribes that already have TAS for their water quality standards being subject to the protections from upstream discharges by the state. This contradicts the broad protection included in SB 21.

For the 20.6.2 NMAC rules, it is also inappropriate to require Sovereign Nations to complete a federal process, particularly one which is so burdensome, for a wholly state-run program. The federal government is no longer protecting these waters, so it is unclear why Tribes, Pueblos,

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<sup>2</sup> NMSA 1978, § 74-6C-5(B)(7).

<sup>3</sup> Comments sent individually from the Pueblo of Jemez and the Pueblo of Laguna via email on October 28, 2026; NMED Reb. Ex. 1 at 16-17 .

and Nations would be required to go through a federal process. It is not clear how this requirement would be handled by EPA for Tribes who may no longer have any Waters of the United States within their boundaries for which Clean Water Act protections would still apply.

We urge the Commission to incorporate the definition included in NMED's rebuttal testimony that has been submitted by two Pueblos themselves and not to incorporate additional requirements that would be burdensome to Tribes and contradict the plain language of SB 21.

Respectfully,

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