



To: Water Quality Control Commission

Re: WQCC 25-74(R): In the Matter of Proposed Amendments to 20.6.2 NMAC and 20.6.5 NMAC – Surface Water Quality State Permitting Program

June 17, 2026

Dear Members of the Water Quality Control Commission:

The Pueblo of Laguna urges the Commission to adopt the New Mexico Environmental Department's proposed definition of "tribal water quality standards" as "standards established by the governing body pursuant to Indian nation, tribal, or pueblo law," as written in NMED's Exhibit 79-A and 79-B.

The Pueblo further urges the Commission to reject the Albuquerque Bernalillo County Water Utility Authority's ("ABCWUA") proposal to require Pueblo and tribes to have applied their water quality standards in a water quality program, to receive EPA approval for their tribal water quality standards, to attain Treatment as a State ("TAS") under the Clean Water Act, and to be subject to triennial review by the EPA, as explained in ABCWUA's Exhibit 1. The Pueblo also urges the Commission to reject the Natural Resource Partnership's proposal to require tribal water quality standards to have been applied in a water quality program consistent with Clean Water Act criteria, and to require Pueblos and tribes to receive approval by the EPA, as explained in NRP's Exhibit 40.

The definition proposed by the NMED reflects the reality that the Pueblo of Laguna, like all other Pueblos, has protected the waters that flow through our lands for generations. Our Environmental and Natural Resources Department monitors surface water quality to ensure that this precious resource is safe from pollution. We safeguard the water that our community uses for ceremonial and everyday purposes, and to protect the wildlife and natural habitats on our lands. The quality of water is an integral part of our daily life, our traditions, and our self-governance as a sovereign nation.

Our role as water protectors would be impeded if this Commission requires that we attain TAS or receive EPA approval before our water quality standards can become enforceable in the state water permitting program. Although our Pueblo currently has TAS, it took us decades to reach this point and other Pueblos do not currently have TAS. We started our Indian Environmental General Assistance Program with the EPA in the 1990s, we developed water quality standards in the early 2000s, we applied for TAS in 2016, and we attained TAS in 2017. There are many reasons why the EPA may delay this process, including the fact that tribal governments are required to meet or exceed EPA standards. For that reason, some Pueblos and tribes applied for TAS in 2014 but still have not attained it. TAS requires a large amount of time, resources, and legal and jurisdictional analysis. Because the current EPA has downsized its staff, we can expect the TAS process to be even more burdensome and time intensive. At least five Pueblos do not currently have TAS. Requiring TAS would threaten the waters that flow through those Pueblos and would similarly threaten other Pueblos with TAS in the event that the EPA declines to approve their standards. To safeguard Pueblos' longstanding role as water protectors, the Pueblo requests the Commission to reject the limiting language proposed by the NRP and the ABCWUA.

That limiting language would also undermine the tribal sovereignty of all Pueblos. When the Legislature added “tribal water quality standards” to Senate Bill 21, it clearly understood the reality that tribal governments are co-equal sovereigns with the State of New Mexico. This language reflects the fact that tribal governments should be free to protect water in the way of their own choosing. Such self-governance is necessary for Pueblos to establish standards that protect tribal uses of water, like ceremonial uses, that the State of New Mexico may not otherwise protect. The State of New Mexico cannot impose regulatory requirements on tribal governments, just like tribal governments cannot impose regulatory requirements on the State of New Mexico. Because these governments are co-equal sovereigns, they must collaborate on equal footing to protect water. The best way to encourage collaboration is to adopt the NMED’s proposed definition of “tribal water quality standards.” As Ms. Lemon from the NMED testified, the department plans to review permit applications for discharges upstream of tribal waters by reviewing the tribal and state standards, picking the more stringent restriction, and applying that effluent limitation to the permit in question. This process would properly enforce tribal standards consistent with the Legislature’s intent.

The language proposed by the NRP and ABCWUA, however, would impair Pueblos’ sovereign power. Requiring that Pueblos and tribes attain TAS, receive approval from the EPA, or be subject to triennial EPA review, would diminish Pueblos’ ability to decide their water quality standards for themselves. It does not make sense to require EPA approval given that the EPA no longer has jurisdiction over the majority of New Mexico’s surface waters. Moreover, language that requires EPA approval may run into legal challenges. In *City of Albuquerque v. Browner*, 97 F.3d 415 (10th Cir. 1996), the Pueblo of Isleta had TAS and sought to impose water quality standards that were higher than the EPA-recommended standards so that the Pueblo

could protect their waters for ceremonial uses. The EPA granted the Pueblo's request, but the City of Albuquerque, which operated a wastewater treatment facility upstream of the Pueblo of Isleta, sued the EPA. *Id.* at 419. The Tenth Circuit Court upheld the EPA's approval because, even though the EPA had the statutory authority to impose the water quality standards, the Pueblo of Isleta had the sovereign power to decide the stringency of their water quality standards. *Id.* at 423. So too, here, the NMED can recognize tribal standards by approving or denying discharge permits.

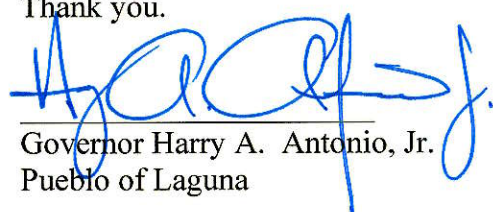
Finally, the NMED's proposed definition is simply more practicable than the definition proposed by the NRP or ABCWUA. The NMED's definition helps to resolve future conflicts because it creates a unified system for protecting water as it flows through state and tribal lands. But the definition proposed by the NRP and ABCWUA would create a patchwork system wherein only those Pueblos with TAS or EPA approval can enforce their standards, causing uncertainty within the permitting process.

The NMED's definition imposes a reasonable limitation by requiring that tribal governments establish their standards pursuant to Indian nation, tribal, or Pueblo law. The NRP and ABCWUA, however, would impose unreasonable limitations by requiring TAS and EPA approval, which can take decades. It would also lead to unreasonable outcomes. If the Commission adopts the NRP's and ABCWUA's definitions, Pueblos without a dedicated "water quality program" would not be able to submit their water quality standards to the NMED. And because the state permitting program requires the NMED—not tribal governments—to approve or deny discharge permits, a permit applicant could argue that a Pueblo has not sufficiently "applied" their standards. The most practicable way to give effect to the statutory language of

Senate Bill 21 is to define tribal water quality standards as proposed by the NMED in Exhibit 79-A and 79-B: “standards established by the governing body pursuant to Indian nation, tribal, or pueblo law.”

In passing Senate Bill 21, the Legislature intended for tribal governments to be equal partners in the state’s permitting scheme. The Commission should honor the sovereign authority of all tribal governments within New Mexico and recognize water quality standards established by Indian tribes.

Thank you.

A handwritten signature in blue ink, appearing to read "Harry A. Antonio, Jr.", is written over a horizontal line.

Governor Harry A. Antonio, Jr.
Pueblo of Laguna