

UNM Law Clinic on behalf of the Pueblo of Jemez (Alexander Guel-James)

Please see attached PDF of letter from Pueblo of Jemez to WQCC.



June 17, 2026

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

Dear Members of the Water Quality Control Commission:

The Pueblo of Jemez 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 noted in NRP's Exhibit 40.

The Pueblo of Jemez is located at the base of the beautiful Jemez Mountains. Our primary water source is the Jemez River, the headwaters of which begin in our ancestral lands—the Valles Caldera—and flow through our Pueblo. Water is our most precious resource and we must maintain its purity to the greatest extent possible for use in our traditional and cultural practices. In our Pueblo of approximately 3,200 tribal members, we have a deep tradition of respecting the waters that flow through the Pueblo. We are a farming

community. Our ancestors planted corn, beans, and squash in the flood plains of the drainages on mesa tops, river valleys, and on the south aspect of the mountains in our ancestral homelands. We farmed in elevations exceeding 8,000 feet above sea level in the ponderosa and conifer mixed forest in the Banco Bonito in the Valles Caldera National Preserve. Today, we depend on water from the Jemez River to irrigate the same crops as our ancestors. We also use the water of the Jemez River for spiritual cleansing. The members of our Pueblo have used the Jemez River to prepare for traditional ceremonies since time immemorial. Because water is so necessary to all aspects of life in the Jemez Pueblo, our tribal members understand that the waters must be protected against pollution. Our internal standards of what we believe the water quality should be are woven into the traditional and cultural practices of the Pueblo.

These waters, however, have been threatened by upstream pollution, sewage spills, and wastewater discharge. The New Mexico Legislature wanted to mitigate this danger when it enacted Senate Bill 21. The law requires that the New Mexico Environmental Department must deny a surface water discharge permit if that “discharge would cause or contribute to water contaminant levels in excess of a downstream state or tribal water quality standard.” This statutory language clearly shows that the Legislature saw Pueblos and tribes as sovereign governments, which may impose more stringent water quality standards than the State of New Mexico. The NMED’s proposed definition that “tribal water quality standards” are “standards established by the governing body pursuant to Indian nation, tribal, or pueblo law,” recognizes the sovereign power of tribes to protect water in the way of their own choosing.

The requirements proposed by the NRP and the ABCWUA would undermine tribal sovereignty and make it more difficult for tribal governments to protect their waters. Those participants would have this Commission require that Pueblos and tribes attain Treatment as a State and receive EPA approval before the tribal water quality standards may be enforced in the state permitting program. We ask the Commission to reject these requirements for three reasons.

First, the process of attaining TAS is very difficult because it requires a great deal of time and effort. The process requires tribal governments to create water quality standards that meet or exceed the EPA's minimum requirements, which can take years for the tribal government to develop and for the EPA to approve. Some of the Pueblos who currently have TAS were only able to attain their status after decades of hard work. Our Pueblo is applying for TAS, but the application process has proved difficult because of the large amount of technical and scientific information that is required. Given that the current EPA has reduced its workforce, we expect the EPA will require at least several months to review our application. If the Commission requires that Pueblos and tribes attain TAS, our waters will be unprotected for every minute that we wait for the EPA's final approval. Even if the application process was effortless, it does not make sense to require TAS or EPA approval because the EPA no longer has jurisdiction over the vast majority of surface waters in New Mexico. Pueblos and tribes should not be required to attain TAS before we can share our water quality standards with the NMED for the new surface water permitting program.

Second, requiring the Pueblo to attain TAS or receive EPA approval would undermine our tribal sovereignty. The Tenth Circuit court of appeals has held that Pueblos' power to determine the stringency of their water quality standard originates from their inherent sovereign power. *City of Albuquerque v. Browner*, 97 F.3d 415 (10th Cir. 1996). In *Browner*, the Pueblo of Isleta had TAS and sought to impose water quality standards designed to protect ceremonial uses of water. *Id.* at 419. The EPA approved their higher standards, but the City of Albuquerque appealed, arguing that the Pueblo did not have authority under the Clean Water Act to impose standards higher than the EPA's recommendations. *Id.* at 421. The *Browner* court acknowledged that the EPA had the statutory authority to impose standards on permittees, but held that the Pueblo of Isleta had the authority to establish water quality standards that were more stringent than the EPA's recommended standards based on the Pueblo's inherent tribal sovereignty. *Id.* at 423. The NMED's administrators have already testified that they will honor tribal water quality standards

when approving or denying surface water discharge permits. Imposing additional requirements may infringe on tribes' inherent sovereign power to decide the stringency of their water quality standards, and so adopting the NRP's and ABCWUA's proposals may result in legal challenges.

Third, these proposed requirements contradict the design of Senate Bill 21. The plain language of the statute creates a state program where regulated entities will apply for permits with the NMED, which will then review whether the proposed discharge would cause water contamination in excess of downstream state or tribal water quality standards. Requiring EPA approval, TAS, or that tribal governments apply their standards in dedicated tribal water quality programs would add no functional value to this process. In fact, it would burden the process by requiring the NMED to verify that every tribal standard has received EPA approval before the NMED can approve or deny a permit. It would also grant regulated entities an opportunity to discharge pollutants into tribal waters by arguing that a Pueblo or tribe has not sufficiently applied their standards in a dedicated water quality program. Creating loopholes around the strong protections of Senate Bill 21 would undermine the Legislature's objective of creating a comprehensive state surface water discharge permitting program. The NMED's proposed definition serves this objective by requiring that tribal governments establish their standards pursuant to Indian nation, tribal, or pueblo law. This definition would give effect to the Legislature's intent that tribal governments act as equal partners alongside the State of New Mexico. The Commission should honor this legislative intent and the inherent sovereign powers of tribal governments by recognizing water quality standards established by Pueblos and tribes in New Mexico.

Thank you.



Governor John Galvan
Pueblo of Jemez