

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

**IN THE MATTER OF FINAL TOTAL
MAXIMUM DAILY LOAD FOR THE
UPPER PECOS RIVER WATERSHED**

No. WQCC 26-84

ORDER

THIS MATTER came before the New Mexico Water Quality Control Commission (Commission or WQCC) for approval at its regularly scheduled public meeting on October 13, 2026, on the *Petition for Approval of the Total Maximum Daily Loads for the Upper Pecos River Watershed and the Upper Rio Grande Watershed* (Petition) of the Surface Water Quality Bureau (Bureau) of the New Mexico Environment Department (Department) filed on August 17, 2026. Brecken Scott appeared at the public meeting as legal counsel for the Department.

The Commission, after due consideration of the proposed Final Draft Total Maximum Daily Load (TMDL) for the Upper Pecos River Watershed, together with the Department's presentation at the hearing, and being otherwise duly advised in the premises, finds:

1. TMDLs are defined under federal regulation as the sum of individual Waste Load Allocations for point sources, Load Allocations for nonpoint source and background conditions, and a Margin of Safety in acknowledgement of various sources of uncertainty in the analysis.
2. Section 303(d) of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. §§ 1251 et seq., requires states to develop TMDLs for each impaired waterbody and the pollutant for which that waterbody is impaired. 33 U.S.C. § 1313(d).
3. Under the New Mexico Water Quality Act, NMSA 1978, §§ 74-6-1 through -17, the Commission is "the state water pollution control agency for this state for all purposes of the federal [Clean Water Act]." NMSA 1978, § 74-6-3(E). "State water pollution control agency" means the

State agency designated by the Governor having responsibility for enforcing State laws relating to the abatement of pollution.” 33 U.S.C. § 1362(1). The Commission is not required by the federal Clean Water Act or the New Mexico Water Quality Act to approve TMDLs.

4. The federal Clean Water Act and the New Mexico Water Quality Act require the state to develop a continuing planning process and a water quality management plan and for the Commission to adopt such process and plan, which is subsequently approved by the Environmental Protection Agency (EPA) and contains EPA-approved TMDLs. 33 U.S.C. § 1313(e); 40 C.F.R. § 130.6(b); NMSA 1978, § 74-6-4(B).

5. The process for developing TMDLs is specified in Section IV of the State of New Mexico Statewide Water Quality Management Plan and Continuing Planning Process (WQMP-CPP), as approved by the Commission on September 21, 2020, pursuant to NMSA 1978, § 74-6-4(B) and available at <https://www.env.nm.gov/surface-water-quality/wqmp-cpp/>. 40 C.F.R. § 130.5(b)(3).

6. Section IV of the WQMP-CPP requires that the final draft TMDL be presented at a WQCC meeting for approval, and that WQCC comments be incorporated into the TMDL as necessary.

7. Vice Chair Bruce Thomson provided the following proposed change to the first paragraph under Section 3.0 in the TMDL document, which was accepted by the Department and added to create the Revised Final Draft:

Escherichia coli (*E. coli*) is a species of coliform bacteria that is present in the intestinal tracts and feces of warm-blooded animals. Most *E. coli* are harmless and are an important part of a healthy human intestinal tract. However, some strains of *E. coli* are pathogenic, meaning they can cause illness, either diarrhea or illness outside of the intestinal tract. *E. coli* is also used as an indicator of the potential presence of other pathogens that may present human health concerns. In addition to human sources, there are many natural sources of *E. coli* including aquatic mammals, mammals grazing in or near the water, agricultural runoff, avian sources, and in some cases, bacterial regrowth in stream sediments. . . .

8. Section 303(d)(2) of the Clean Water Act requires states to submit the final TMDLs to the EPA for approval. 33 U.S.C. § 1313(d)(2). Once approved by EPA, TMDLs become components of a state's water quality management plan. 40 C.F.R. § 130.6(c)(1).

9. The Bureau properly followed the TMDL development process for the Upper Pecos River Watershed as specified in Section IV of the WQMP-CPP, and correctly calculated the TMDL for the Upper Pecos River Watershed under applicable federal law and regulation.

IT IS THEREFORE ORDERED:

The Revised Final Draft TMDL for the Upper Pecos River Watershed, a copy of which is attached to and made a part of this Order, is approved for submittal to EPA for final approval under 33 U.S.C. § 1313(d)(2) and incorporation into the State of New Mexico Statewide WQMP-CPP.

Dated this 23 day of October 2026.



William Brancard, Chair
Water Quality Control Commission