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Michael B. Sloane

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15 August 2024

Michael Baca
Water Quality Standards Coordinator
New Mexico Environment Department (NMED)
Surface Water Quality Bureau (SWQB)
P.O. Box 5469
Santa Fe, NM, 87502

***RE: Outstanding National Resource Waters Designation Nominations; NMERT
Project No. NMERT-3697***

Dear Mr. Baca:

The Department has reviewed the NMED SWQB's draft of the 2024 nominations for Outstanding National Resource Water (ONRW) Designation (Document). Please consider this letter as the Department's response to the Document.

The Department supports the designation of ONRWs as a means of protecting streams, lakes, and wetlands from future degradation, and thus providing increased water quality protection. However, the Department has reservations regarding the use of Special Trout Water (STW) designation as the sole criteria for nominating ONRWs. Special Trout Waters are a regulatory framework for managing trout angling, largely through limiting harvest via reduced bag limits and tackle restrictions. Special Trout Waters are established in rule by the New Mexico State Game Commission (SGC) for a variety of reasons. Some STWs hold significant ecological value (e.g., a stronghold for native fish, unique biodiversity, pristine aquatic or riparian habitat, etc.) while others exist to moderate harvest of trout in high-use fisheries like reservoir tailwaters and urban ponds. Thus, STW designation may sometimes compliment the spirit of ONRW nomination but in other cases do not. Further, we are concerned about creating an administrative and regulatory link between ONRW and STWs that may create a public perception of de facto surface water regulation via SGC rule making. Such a perception could negatively influence fisheries management by creating challenges to the addition or removal of waters from the STW list. We recognize that 20.6.4.9(B)(1) NMAC provides for use of STWs as a nominating criteria that "may" be used in designation of ONRWs but

respectfully request reconsideration of the use of STW status as a sole nominating criteria.

The Department is also concerned with the inclusion of the four ONRW nominations that have hydrologic connections to State Fish Hatcheries (SFH). These waters and hatcheries are the Rio Chama near Heron reservoir (Los Ojos SFH), the most downstream Red River reach (Red River SFH), Rio Cebolla (Seven Spring SFH), and the Pecos River (Lisboa Springs SFH). State Fish Hatcheries produce native and sportfish to support conservation efforts and recreational angling across the state. Each hatchery's effluent is tightly regulated by a U.S. Environmental Protection Agency National Pollution Discharge Elimination Permit. These permits require that stringent water quality standards be met and place strict limitations on the discharge of nutrients and other potential pollutants. These permit requirements are the limiting factor in the production of fish from SFHs. Any further tightening of these requirements would impede the Department's ability to provide outdoor recreation opportunities, conduct native trout conservation activities, and meet our legislatively mandated performance metrics for fish production and angler satisfaction. We request that SWQB be explicit in the ONRW process that designation will not lead to further restrictions on hatchery effluent permits.

The Department and our partners have an extensive history of and active programs for native fish restoration, particularly Rio Grande Cutthroat Trout. The process of native fish restoration typically includes construction of a barrier to upstream fish movement and removal of non-native fish, often with pesticide per 20.6.4.16 NMAC. The list of nominated ONRWs includes four streams with existing fish barriers (Tanques Creek, Canada Tio Grande, Palociento Creek, and West Fork Luna Creek), most of which require maintenance or improvement. Additionally, barrier construction is being considered as a conservation tool in six waters on the nomination list (Cabresto Creek, Columbine Creek, Gavilan Canyon, Italianos Creek, Manzanita Creek, and Yerba Creek) We request that the ONRW designation process explicitly state that maintenance, improvement, and construction of fish barriers, as well as treatments to remove non-native fish, are compatible with ONRW designation.

In keeping with spirit of the other nominating criteria for ONRWs outlined in 20.6.4.9(B) NMAC (i.e., streams with exceptional water and habitat quality being the most suitable for ONRW designation), the Department disagrees with the nomination of two stream reaches in the Document based on their regulated state: the Rio Chama below El Vado dam, and the Rio Chama below Abiquiu Reservoir. These reservoir tailwater reaches have highly altered flow regimes, temperatures, sediment loads, and nutrient levels, and therefore do not meet the ONRW eligibility criteria which states, "the water has not been significantly modified by human activities in a manner that substantially detracts from its value as a natural resource" (20.6.4.9(B)(3) NMAC). Further, these waters are examples of STW use as a fisheries management tool to equitably distribute harvest of stocked trout. As a result, the Department recommends these two reaches be removed from consideration for ONRW status.

Thank you for the opportunity to provide comments regarding the Document. Please contact Jack Marchetti, Aquatic/Riparian Habitat Specialist, at jack.marchetti@dqf.nm.gov or 505-479-1269 if you have any questions.

Sincerely,

Michael B. Sloane
Director