

FILED

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

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REGIONAL HEARING CLERK  
EPA REGION VI

In the Matter of	)	Docket No. CWA-06-2023-1727
	)	
Albuquerque Bernalillo County	)	
Water Utility Authority	)	Proceeding to Assess a Class II Civil
<i>Respondent</i>	)	Penalty under Section 309(g) of the Clean
	)	Water Act
	)	
U.S. Environmental Protection Agency	)	
<i>Complainant</i>	)	
	)	
<b>Pueblo of Isleta</b>	)	
<i>Proposed Intervenor</i>	)	NPDES Permit No. NM 0022250
	)	

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**MOTION FOR LEAVE TO INTERVENE**

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Pursuant to 40 C.F.R. § 22.11(a), the Pueblo of Isleta (hereafter “Pueblo”) respectfully requests that the Presiding Officer grant leave for the Pueblo to intervene in the above-captioned administrative action by the U.S. Environmental Protection Agency (hereafter “EPA”) against the Albuquerque Bernalillo County Water Utility Authority (hereafter “ABCWUA”), asserting the following in support:

**PROCEDURAL HISTORY**

1. On December 1, 2019, the EPA issued National Pollutant Discharge Elimination System (hereafter “NPDES”) Permit No. 0022250 to the ABCWUA pursuant to the Clean Water Act and relevant clean water standards.

2. On July 10, 2022, ABCWUA caused a 6.7-million-gallon spill of raw sewage from a collapsed 48-inch sewage pipe, 3.7 million gallons of which reached the Rio Grande. This Sanitary Sewer Overflow (hereafter “SSO”) exceeded the permitted effluent limitations established by the NPDES Permit in violation of Part I.A of the Permit and Section 301 of the Clean Water Act, 33 U.S.C. § 1311.

3. The EPA issued a Findings of Violation and Compliance Order against ABCWUA under docket number CWA-06-2023-1703 on November 1, 2022, describing the water utility authority’s violations of the NPDES Permit and Clean Water Act relating to the July 2022 SSO.

4. On December 1, 2022, Pueblo of Isleta Second Lieutenant Governor Blane Sanchez, on behalf of the Pueblo of Isleta, submitted written comments to the EPA regarding its Findings and Order in CWA-06-2023-1703. These comments are enclosed as Attachment A and incorporated by reference herein.

5. On May 30, 2023, the EPA filed an Administrative Complaint under the above-captioned docket number, assessing Class II Civil Penalties against ABCWUA relating to the July 2022 SSO.

### **PROPOSED INTERVENOR**

6. The Pueblo of Isleta is a federally recognized Indian Tribe with inherent sovereign authority to self-govern, pursuant to the Pueblo’s Constitution and Tribal law.

7. The Pueblo’s lands are south of the ABCWUA.

8. The Pueblo is a Rio Grande water user downstream from the ABCWUA.

9. Pursuant to Section 518(e) of the Clean Water Act, 33 § U.S.C. 1377(e), since 1992, the Pueblo of Isleta has been granted treatment in a manner similar to a State for purposes of promulgating and implementing Tribal water quality standards. *See* PUEBLO OF ISLETA,

SURFACE WATER QUALITY STANDARDS (Jan. 24, 1992), available at: <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-pueblo-isleta>.

## **ARGUMENT**

10. Upon information and belief, the Parties have not yet filed a prehearing information exchange pursuant to 40 C.F.R. § 22.19.

11. Given this, the Pueblo is entitled to intervene as a matter of right under 40 C.F.R. § 22.11(a) because: the Pueblo claims an interest relating to the cause of action; and a final order in this administrative action may as a practical matter impair the Pueblo's ability to protect that interest; and the Pueblo's interests are not adequately represented by existing parties.

**A. The Proposed Intervenor is entitled to intervene based on its interest in the underlying action.**

12. The Pueblo's lands are directly south of the ABCWUA, downstream on the Rio Grande. The Rio Grande has been a resource to the Pueblo of Isleta far longer than the City of Albuquerque and Bernalillo County have used the river to flush wastewater.

13. As a result of the ABCWUA's July 2022 SSO, the Rio Grande's E. coli levels exceeded the Pueblo's water quality standards by more than 176 times. The Isleta Diversion Dam, as well as the Pueblo's irrigation canals, recreational lakes, and cultural sites filled with sewage. Floating solids, oils, and biomass visibly covered the water's surface and canal walls. This contamination directly impacted the Pueblo's and Tribal Members' and other Pueblo residents' use and enjoyment of the Rio Grande, including for: purposes of household gardens and the Pueblo's exercise of food sovereignty; larger scale agricultural production and the Pueblo's exercise of economic development; and traditional, cultural, and religious purposes.

14. After the July 2022 SSO, the E. coli levels in the Rio Grande and applicable irrigation systems within the Pueblo exceeded the safe limit for use for food crops, flood irrigation, or primary contact of any kind. Because current infrastructure within the Pueblo is such that all irrigation from the Rio Grande requires primary contact with river's water, even agricultural producers who were not growing food-crops (i.e. alfalfa producers and cattle ranchers) were prevented from using the water.

15. ABCWUA's July 2022 SSO not only impacted the bottom line of local agricultural producers, but also the daily lives of families, who could no longer safely irrigate gardens, fish, or engage in cultural use of the Rio Grande.

16. Even after E. coli levels within the Rio Grande returned to standard levels, the sewage left unsightly film, residue, and foam coating the edges of the river and canals, causing Tribal Member and residents to reasonably distrust the health and safety of the Rio Grande. This led to further non-use of the Rio Grande due to the July 2022 SSO.

17. The July 2022 SSO also caused cultural damage to the Pueblo of Isleta as the sewage flowed through traditional and religious sites. This damage will outlive the damage done to the season's crops.

18. The Pueblo of Isleta and its Tribal Members and residents have a direct interest in the EPA's enforcement against the ABCWUA's July 2022 violations of its NPDES Permit and of federal water quality laws. ABCWUA caused raw sewage to trespass onto Pueblo lands, in Tribal Members' household gardens, within agricultural producers' business operations, and throughout sites of traditional, cultural, and religious significance. Other substantial SSO events by the ABCWUA, including one in February 2015 and another in February 2023, demonstrate that the

Pueblo must intervene to ensure that its interests in protecting itself, its Tribal Members, and its residents are adequately considered.

19. Given the foregoing, the Pueblo of Isleta has both a direct interest in this matter as well as a *parens patriae* interest on behalf of its Tribal Members and residents. Thus, the Pueblo should be permitted to intervene.

**B. The Proposed Intervenor is entitled to intervene as the final order in the underlying action may impair the Intervenor’s ability to protect its interests.**

20. Under the Clean Water Act, the Pueblo of Isleta is prohibited from commencing any citizen suit against the ABCWUA for its violations once the EPA has commenced an enforcement action against the violator. 35 U.S.C. § 1365(b)(1)(B).

21. To the extent the underlying Administrative Complaint is later interpreted by a federal court to constitute a diligent enforcement action by the regulator, the Pueblo may be barred from bringing its own citizen suit upon final order in this matter. While some federal courts have held that citizen’s suits are not barred by administrative enforcement actions, others have determined that where the regulator enters into a consent decree with the alleged violator, including after an administrative action, citizen’s suits may be barred. *See e.g. Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc.*, 484 U.S. 49, 64, 108 S. Ct. 376, 385, 98 L. Ed. 2d 306 (1987) (limiting federal court jurisdiction over citizen suits to Clean Water Act violations shown to be continuous, barring such suits entirely for wholly past violations); *Karr v. Hefner*, 475 F.3d 1192, 1194 (10th Cir. 2007) (barring citizen suit where EPA reached consent decree with alleged Clean Water Act violator, with the Court noting that “government prosecution need not be far-reaching or zealous” to constitute diligent enforcement sufficient to bar a citizen’s suit); *Pape v. Menominee Paper Co.*, 911 F. Supp. 273, 277 (W.D. Mich. 1994) (administrative

consent order between state natural resources regulator and alleged Clean Water Act violator constituted “diligent prosecution” sufficient to bar citizen’s suit).

22. Although the federal Clean Water Act provides a State Governor with standing to commence a civil action in federal court even while an enforcement action by the EPA is pending, the same right does not appear to be recognized for Tribes – even those Tribes approved for treatment as a state for water quality purposes, like the Pueblo of Isleta. *See* 35 U.S.C. § 1365(h).

23. Therefore, the Pueblo of Isleta’s interests in appropriate injunctive relief and civil penalties based on ABCWUA’s past violations of the Clean Water Act can only be protected through the Pueblo’s intervention in this administrative matter. A final order in this administrative action may, as a practical matter, impair the Pueblo’s ability to protect that interest. Thus, the Pueblo should be permitted to intervene.

**C. The Proposed Intervenor is entitled to intervene because the Pueblo’s interests are not adequately represented by the Parties.**

24. The EPA is unable to adequately represent the unique interests of a sovereign Pueblo recognized as a federal Indian Tribe.

25. Unlike the Pueblo of Isleta, the EPA does not possess the direct knowledge of the unique interests of Tribal Members and residents who were impacted by the July 2022 SSO.

26. Neither does the EPA possess knowledge of the traditional, cultural, and religious sites within the Pueblo that were harmed by the July 2022 SSO.

27. As described in Attachment A, which is incorporated herein, the Pueblo asserts that the EPA’s past-handling of alleged Clean Water Act violations by ABCWUA demonstrates that the agency is not able to adequately protect the Pueblo’s interests. Throughout the pendency

of the EPA's administrative action relating to the water utility authority's February 2015 SSO, representatives of the EPA met with Pueblo elected leadership and took oral comments regarding the significant harms caused by the SSO to Pueblo residents and cultural sites. Ultimately, however, the EPA resolved such matter through a Consent Agreement and Final Order that assessed just \$33,500 in civil penalties against ABCWUA. CONSENT AGREEMENT AND FINAL ORDER, *In re: Albuquerque Bernalillo County Water Utility Authority*, U.S. EPA Region 6, Docket No. CWA-06-2015-1777 (March 16, 2016). Pueblo leadership continues to feel that the relief obtained by the EPA relating to the ABCWUA 2015 SSO failed to adequately take the Pueblo's concerns and interests into consideration.

28. As described in Attachment B, which is incorporated herein, the Pueblo asserts that the EPA has not properly considered the nature, extent, gravity, and history of the ABCWUA's Permit violations in assessing \$281,357 in Class II civil penalties. Under the Pueblo's assessment, \$672,009 in civil penalties is warranted. Thus, the Pueblo has different interests from the EPA in the underlying matter.

29. Just as the Clean Water Act recognizes that a State has unique interests from the federal government to enforce its clean water standards and federal clean water laws, so too should this administrative forum recognize that the Pueblo of Isleta – which has treatment as a state status for purposes of regulating its own water quality standards – has unique interests from the federal regulator here. *See e.g.* 33 U.S.C. § 1319(g) (requiring the EPA Administrator to consult with the State in which the violation occurs prior to assessing administrative civil penalties); 33 U.S.C. § 1365 (permitting State Governors to commence a civil action for violations of the Clean Water Act without regard to the conditions precedent otherwise applicable

to bar citizen's suits). Such unique interests can only be protected by the Pueblo itself, not the federal government. Thus, the Pueblo should be permitted to intervene.

**D. Right to Participate**

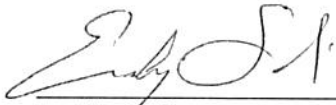
30. Pursuant to 33 U.S.C. § 1319(g)(4), to the extent the Pueblo's request to intervene herein is denied, the Pueblo asserts its right as an interested person to otherwise participate in the underlying action, including through its timely comments enclosed and incorporated herein as Attachment B, and through the opportunity to request and participate in any hearing on this matter.

**REQUEST FOR RELIEF**

Proposed intervenor, Pueblo of Isleta, respectfully requests that the Presiding Officer issue the following relief:

- A. Grant leave permitting the Pueblo to intervene as a party in the above-captioned administrative action by the EPA against the ABCWUA, pursuant to 40 C.F.R. § 22.11;
- B. In the alternative, grant participant status to the Pueblo as an interested party in the above-captioned administrative action, pursuant to 33 U.S.C. § 1319(g)(4);
- C. Accept this pleading as an acknowledgment of consent of electronic service of process of all pleadings in this matter to the Pueblo of Isleta via undersigned counsel's email address, pursuant to 40 C.F.R. § 22.5(b)(2);
- D. Such other relief as the Presiding Officer deems just and proper.

SUBMITTED THIS 26th DAY OF June, 2023 BY:



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Emily Soli  
General Counsel  
Pueblo of Isleta  
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505-869-9715  
[emily.soli@isletapueblo.com](mailto:emily.soli@isletapueblo.com)  
*POI accepts service via email*

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Motion and its enclosures were sent to the following persons in the manner specified, on **June 26, 2023**:

Certified Mail, Return Receipt Requested: Hon. Lorena Vaughn  
Regional Hearing Clerk (OCR)  
U.S. EPA Region 6  
1201 Elm St., Suite 500  
Dallas, TX 75270-2102  
*And via email: [Vaughn.Lorena@epa.gov](mailto:Vaughn.Lorena@epa.gov)*

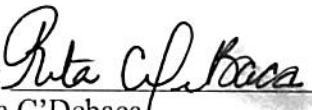
Cheryl T. Seager  
Director  
Enforcement and Compliance Assurance Division  
U.S. EPA Region 6  
1201 Elm St., Suite 500  
Dallas, TX 75270-2102

Mark S. Sanchez  
Executive Director  
Albuquerque Bernalillo County Water Utility Auth.  
4201 2nd St. SW  
Albuquerque, NM 87105

Via email: Shelly Lemon

Bureau Chief  
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New Mexico Environment Department  
PO Box 5469  
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By:   
Rita C'Debaca  
Paralegal  
Pueblo of Isleta, Legal Department

Vernon B. Abeita  
Governor



Lt. Governor, Virgil N. Lucero  
Lt. Governor, Blane M. Sanchez

**PUEBLO OF ISLETA**  
OFFICE OF THE GOVERNOR

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December 1, 2022

Cheryl T. Seager  
Director, Enforcement and Compliance Assurance Division  
c/o: Anthony Loston  
Water Enforcement Branch (ECD-WM)  
U.S. EPA, Region 6  
[loston.anthony@epa.gov](mailto:loston.anthony@epa.gov)

**Re: *Administrative Order; Docket No. CWA-06-2023-1703; NPDES Permit No. NM0022250***

The nearly seven-million-gallon raw sewage spill caused by the Albuquerque-Bernalillo County Water Utility Authority's ("ABCWUA") sewage line collapse on July 10, 2022 endangered the health and welfare of the Pueblo of Isleta, caused harm and undetermined damage to Isleta agricultural producers and household gardeners, and impacted cultural sites. As a sovereign government immediately downstream of the ABCWUA service area, the Pueblo of Isleta submits this letter to the EPA, ABCWUA, and State of New Mexico, regarding the matter docketed as CWA-06-2023-1703.

Recently, the EPA issued an Administrative Order to the ABCWUA, finding two violations of the facility's National Pollutant Discharge Elimination System ("NPDES") permit relating to its July 10, 2022, Sanitary Sewer Overflow ("SSO"): 1) the ABCWUA failed to meet its duty to take all reasonable steps to minimize or prevent discharges with a reasonable likelihood of adversely affecting human health and the environment; and 2) the ABCWUA failed to provide timely notice of the SSO to the Pueblo of Isleta.

Through this letter, the Pueblo of Isleta respectfully requests the EPA Enforcement and Compliance Assurance Division to proceed with its enforcement action relating to ABCWUA's permit violations and to seek relief that appropriately takes into account the history, nature, and impact of those violations.

**History of the ABCWUA's Permit Violations**

The ABCWUA's recent SSO is not unique. On February 27, 2015, the ABCWUA caused a multi-million gallon SSO into the Rio Grande – and thus onto the Pueblo of Isleta – due to infrastructure failures. Despite oral comments to the EPA by the Isleta Tribal Council and the

Attachment "A"

Isleta Governor regarding the harm caused to Pueblo residents and cultural sites by the 2015 SSO, the EPA ultimately assessed only \$33,500 in civil penalties against the ABCWUA.

As with the ABCWUA's permit violations in 2015, one of the July 2022 permit violations identified by the EPA relate to the ABCWUA's facilities' infrastructure deficiencies. ABCWUA's repeated failure to adequately maintain and operate its facilities warrants consideration as the EPA determines how to proceed in its enforcement action.

### **Nature of the ABCWUA's Permit Violations**

The ABCWUA's permit violations, as found by the EPA, were both immediate and egregious. Immediately upon the issuance of the NPDES permit, the ABCWUA was out of compliance with its requirement to ensure proper operations and maintenance of its infrastructure. According to the EPA's inspection report, ABCWUA had improperly recorded the 48-inch sewage line that collapsed as reinforced with fiberglass lining. Such lining would have been consistent with ABCWUA's permit duty to "at all times properly operate and maintain all facilities and systems...in a manner which will minimize upsets and discharges of excessive pollutants." NPDES Permit NM 0022250, Part III.B.3.a. Because ABCWUA failed to reinforce its sewage line in the manner recorded, the line collapsed and caused an estimated 6.7 million gallons of sewage to spill from the system, and estimated 3.7 million gallons flowing into the Rio Grande. ABCWUA's failure to both properly record the qualities of its infrastructure and to properly support its system to avoid SSO events indicates either a willful disregard as to permit requirements or a willful disregard as to the actual specifications of existing infrastructure.

Additionally, that the ABCWUA neglected to immediately notify its neighbor of a nearly seven-million-gallon SSO, regardless of permit requirements, demonstrates a willful disregard for the health and safety of the residents of the Pueblo of Isleta. That such a failure also constitutes a permit violation likewise represents a willful disregard for permit requirements.

The immediate and egregious nature of each of the permit violations identified by the EPA's Administrative Order should be considered as the EPA determines the appropriate level of relief to seek through its enforcement action.

### **Impact of the ABCWUA's Permit Violations**

Finally, the impacts of ABCWUA's permit violations to the Pueblo of Isleta are serious. As a result of the ABCWUA's failure to adequately maintain and reinforce its infrastructure, the Pueblo's diversion dam, irrigation ditches, and cultural sites filled with raw sewage. Worse, the ABCWUA's failure to immediately notify the Pueblo of the overflow event adversely affected Pueblo leadership's opportunity to take mitigation steps to protect against the 3.7 million gallon overflow into the Rio Grande. Thus, in the Pueblo of Isleta, floating solids, oils, and sludge visibly covered the water's surface and ditch walls.

As a result, farmers, ranchers, and households within the Pueblo of Isleta were unable to use the seriously contaminated water for any purpose, as it exceeded the Pueblo's *E.coli* water quality standards by 275 times and thus was not suitable for use for watering food crops, flood

irrigation, traditional/religious use, or primary contact.<sup>1</sup> This not only impacted the bottom line of Isleta's agricultural producers, but also the daily lives of families, who could no longer safely irrigate gardens, fish, or engage in cultural use of the Rio Grande. Even after *E.coli* levels receded to typical levels (but still above Isleta *E.coli* standard), the sewage left unsightly film, residue, and foam coating the riverbanks and ditches, discouraging the Isleta community from trusting the health and safety of the Rio Grande generally, even if they were outside of the discharge impact area. Impacts to fish, plants, and wildlife remain unknown.

The SSO also caused cultural impacts. The Rio Grande has been a resource to the Pueblo of Isleta far longer than the City of Albuquerque has used the river to discharge treated wastewater to the River. The contamination from the SSO not only impacted the Pueblo's use and enjoyment of the Rio Grande, but such contamination flowed through restricted and protected cultural sites. The cultural and environmental impacts of the discharge harmed tribal members who could not safely water their gardens, or fish, or flood irrigate their commercial crops.

The serious nature of these impacts should be considered as the EPA determines the appropriate relief to seek from ABCWUA through its enforcement action.

### **Penalties, Injunctive Relief, and Permit Amendments are Warranted**

The Pueblo of Isleta requests that the EPA pursue its enforcement action against the ABCWUA and seek appropriate civil relief, including through a consent judgment if appropriate, including:

- Assess class II civil penalties against the ABCWUA, given the history, nature, and impacts of its permit violations;
- Pursue a civil action for injunctive relief, including mandates: to improve the capacity of the regional storm water capture system to ensure the Rio Grande's protection from future SSOs; and to audit all ABCWUA sewage collection systems to ensure permit compliance, including compliance with fiberglass reinforcement specifications;
- Request that the ABCWUA issue reasonable compensation to individual Isleta Tribal Members harmed by the July SSO; invest in the Pueblo of Isleta's irrigation and well-water infrastructure as a means to provide water-users with a back-up for irrigation in the event of a future SSO; and provide funding to allow the Pueblo to engage in an environmental damages assessment;
- Amend the ABCWUA's NPDES permit to: require additional pollutant scans at more locations and with greater frequency; require a renewed study of methylmercury in fish tissue downstream of the Southside Wastewater Reclamation Plant discharge and upstream of the northern Pueblo of Isleta boundary; develop an integrated plan relating to

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<sup>1</sup> On July 13 2022, the concentration of *E.coli* was greater than 24,196 MPN/100 ml.

regional sewer overflow, sewer collection systems, and storm and wastewater discharge and incorporate such plan into the NPDES permit; improve communication protocol between the ABCWUA and impacted water users, including the Middle Rio Grande Conservancy District; and require in-kind and technical support to the Pueblo of Isleta in the event of future SSOs.

Finally, as an interested party that intends to submit formal comments in the event of a civil penalty assessment, the Pueblo requests notice of all actions and pleadings relating to Docket No. CWA-06-2023-1703. The Pueblo requests that notice of such actions and pleadings be provided to the Pueblo's General Counsel, Emily Soli, at [Emily.Soli@isletapueblo.com](mailto:Emily.Soli@isletapueblo.com). The Pueblo appreciates the EPA's commitment to water quality and its attention to this letter.

Sincerely,

 *2ND LT. GOV.*  
FOR ~~Vernon B. Abeita~~, Governor

cc: Danielle Shuryn, Compliance Division Manager, ABCWUA ([dshuryn@abcwua.org](mailto:dshuryn@abcwua.org))  
Shelly Lemon, Bureau Chief, NM Environment Dept. ([shelly.lemon@state.nm.us](mailto:shelly.lemon@state.nm.us))  
Susan Lucas Kamat, NM Environment Dept. ([susan.lucaskamat@state.nm.us](mailto:susan.lucaskamat@state.nm.us))

Max A. Zuni  
Governor



Lt. Governor, Eugene Jiron  
Lt. Governor, Juan Rey Abeita

**PUEBLO OF ISLETA**  
**OFFICE OF THE GOVERNOR**

P.O. Box 1270  
Isleta, New Mexico 87022  
Telephone: 505-869-3111

June 26, 2022

Regional Hearing Clerk  
U.S. EPA Region 6  
1201 Elm St.  
Suite 500  
Dallas, TX 75270-2102

**Re: *Comments on Assessment of Class II Civil Penalties;***  
***Docket No. CWA-06-2023-1727;***  
***NPDES Permit No. NM0022250***

To Whom it May Concern:

On behalf of the Pueblo of Isleta, I submit the following comments on the U.S. Environmental Protection Agency's (EPA) proposed assessment of Class II Civil Penalties against the Albuquerque Bernalillo County Water Utility Authority (ABCWUA). Concurrent with these comments, the Pueblo, by and through its Legal Department, has also filed a Motion to Intervene in the underlying administrative action.

**Pueblo of Isleta as a Commenter and Participant**

The Pueblo of Isleta is a federally recognized Indian Tribe with inherent authority to self-govern. The Pueblo's lands are south of the ABCWUA, downstream on the Rio Grande, such that any sewage overflows from the ABCWUA impact the Pueblo of Isleta and its Tribal Members. The Pueblo self-evidently has an interest in the water quality of the Rio Grande, which is routinely used by Tribal Members and other Pueblo residents for irrigation, fishing, and religious and cultural purposes.

Likewise, the Pueblo has a self-evident interest in the areas adjacent to and near its lands, including the area north of the Reservation boundary, that are impacted by Clean Water Act violations of the ABCWUA. The Pueblo resided in and governed those lands for centuries, and the connections forged over those years still exist today in our people's cultural and religious practices. Because neither water nor pollution recognizes political boundaries, impacts to the environment near the Pueblo's lands impact the Pueblo itself.

Attachment B to Pueblo's Motion to Intervene  
In re: Albuquerque Bernalillo County Water Utility Authority  
Docket No. CWA-06-2023-1727

Attachment "B"



Thus, the Pueblo of Isleta is entitled to submit these timely comments and to be included as a participant in the underlying matter under Section 309(g)(4)(A) of the Clean Water Act, 33 U.S.C. § 1319(g)(4)(A).

### **ABCWUA's Permit Violations**

As acknowledged by the EPA in its Administrative Complaint, the ABCWUA's July 2022 Sanitary Sewage Overflow (SSO) is not the water utility authority's first – or last – clean water violation.

On February 27, 2015, the ABCWUA caused a 6-million gallon SSO into the Rio Grande – and thus into the Pueblo of Isleta – due to infrastructure failures. Despite oral comments to the EPA by the Isleta Tribal Council and the Isleta Governor regarding the severity of damages caused to Pueblo residents and cultural sites by the 2015 SSO, the EPA ultimately assessed only \$33,500 in civil penalties against the ABCWUA.

As with the ABCWUA's permit violations in 2015, the water utility authority's violations leading to the July 2022 SSO relate to the facilities' infrastructure deficiencies. Unlike the 2015 violations, however, the ABCWUA's 2022 violations exposed the Pueblo's residents and agricultural producers to serious health and safety concerns, as the SSO occurred during the growing season when Tribal Members have direct contact with their water irrigated from the Rio Grande. These health and safety impacts were detailed in the Pueblo's December 1, 2022 comments to the EPA and interested parties.

Even after the EPA's November 2022 Findings of Violation and Compliance Order to ABCWUA, the water utility authority had yet another infrastructure failure resulting in a spill of 800,000 gallons of raw sewage on February 28, 2023.

The repeated failures of ABCWUA's facilities indicate the need for strict enforcement by the EPA in order to protect the health and safety of downstream users of the Rio Grande, including the Pueblo of Isleta and its Tribal Members. The penalties and warnings issued thus far have been insufficient to prompt ABCWUA to properly manage and maintain its facilities. Thus, public safety demands that the EPA take appropriate enforcement action now to prevent further SSOs.

### **Penalties**

While the Pueblo of Isleta agrees with the EPA that the nature, extent, gravity, and history of the ABCWUA's Permit violations warrant assessment of Class II civil penalties, the Pueblo asserts that a higher amount than that assessed by the EPA is warranted.



The EPA is authorized to issue a maximum penalty of \$323,081 per each violation, based on a class II assessment not to exceed \$25,847 per day. 33 U.S.C. § 1319(g)(2)(8), as modified by 40 C.F.R. Part 19.

The EPA's administrative complaint seeks \$281,357 in civil penalties against ABCWUA, which represents just over 11 days class II assessments – although the water utility authority's violations lasted much longer than that.

The Pueblo of Isleta asserts that \$672,009 in Class II civil penalties should be assessed against ABCWUA. Specifically, the following penalties are warranted:

- Civil penalties in the amount of \$323,081 for the ABCWUA's violation of Parts III.B.2 and III.B.3 of the Permit by failing to properly maintain and record the condition of its facilities, including the 48-inch sewer pipe which collapsed on July 10, 2022. This violation occurred each day between the effective date of NPDES Permit No. 0022250 on December 1, 2019 through the date of the 48-inch pipe collapse on July 10, 2022. Assessment of penalties of \$25,847 per day of such violation exceeds the statutory maximum. Thus, the Pueblo requests that the maximum amount of \$323,081 be assessed for this permit violation.
- Civil penalties in the amount of \$323,081 for the ABCWUA's violation of Parts III.B.2 and III.B.3 of the Permit by failing to properly maintain and record the condition of its facilities, including the 30-inch force main break which resulted in a discharge of 800,000 gallons of untreated wastewater on February 28, 2023. This violation occurred each day between the effective date of NPDES Permit No. 0022250 on December 1, 2019 through the date of the 30-inch main break on February 28, 2023. Assessment of penalties of \$25,847 per day of such violation exceeds the statutory maximum. Thus, the Pueblo requests that the maximum amount of \$323,081 be assessed for this permit violation.
- Civil penalties in the amount of \$25,847 for the ABCWUA's violation of Part I.D of the Permit by failing to immediately notify representatives from the Pueblo of Isleta of the July 10, 2022 SSO.

### **Other Relief**

To the extent the EPA and the ABCWUA attempt to reach a resolution of matter CWA-06-2023-1727 through a Consent Decree, the Pueblo of Isleta requests to be included in all discussions between the parties relating to such settlement. Such participation is warranted given the severe impacts that the ABCWUA's Permit violations have had on the Pueblo of Isleta, as detailed in the Pueblo of Isleta's December 1, 2022 comments under CWA-06-2023-1703. Further, given the proximity of ABCWUA to the Pueblo, any ongoing and future Permit violations will continue to impact Isleta Tribal Members and Pueblo residents. Thus, I request



that the Pueblo's interests be directly considered by the Parties in crafting any Consent Decree. Specifically, I request that a Consent Decree:

- Direct ABCWUA to pay to the Pueblo of Isleta \$672,009, in lieu of civil penalties, to be used by the Pueblo to: 1) compensate Tribal Members who were directly impacted by the July 2022 SSO; and 2) invest in the Pueblo's water infrastructure in order to protect Tribal Members from adverse impacts of future violations by ABCWUA;
- Direct ABCWUA to participate in an EPA-facilitated working group to improve the capacity of the regional storm water capture system to ensure the Rio Grande's protection from future SSOs and failures or inefficiencies of the region's decentralized wastewater treatment systems;
- Direct ABCWUA to audit all of its systems and facilities to ensure permit compliance, including compliance with fiberglass reinforcement specifications;
- Amend the ABCWUA's NPDES permit to: require additional pollutant scans at more locations and with greater frequency; require a renewed study of methylmercury in fish tissue below the facility discharge and above the northern Pueblo of Isleta boundary; develop an integrated plan relating to regional sewer overflow, sewer collection systems, and storm and waste water discharge and incorporate such plan into the permit; improve communication protocol between the ABCWUA and impacted water users, including but not limited to the Pueblo of Isleta; and require in-kind and technical support to the Pueblo of Isleta in the event of future SSOs.

Finally, as an interested party, the Pueblo requests notice of and participation in all proceedings relating to Docket No. CWA-06-2023-1703 and CWA-06-2023-1727, as well as service of all pleadings and orders. The Pueblo requests such notice be provided to the Pueblo's General Counsel, Emily Soli, at [Emily.Soli@isletapueblo.com](mailto:Emily.Soli@isletapueblo.com). I also request that the EPA provide a written response to these comments.

I appreciate the EPA's commitment to water quality and the Parties' attention to these comments.

Sincerely,

  
\_\_\_\_\_  
Max Zuni  
Pueblo of Isleta Governor

