


**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

_____)
In re:)
)
Incorporated County of Los Alamos,)
New Mexico)
)
Re: “DESIGNATION DECISION AND)
RECORD OF DECISION IN RESPONSE TO)
PETITION BY AMIGOS BRAVOS FOR A)
DETERMINATION THAT STORMWATER)
DISCHARGES IN LOS ALAMOS COUNTY)
CONTRIBUTE TO WATER QUALITY)
STANDARDS VIOLATIONS AND REQUIRE)
CLEAN WATER ACT PERMITS”)
(December 16, 2019))
_____)

PETITION FOR REVIEW



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Table of Contents

I. Introduction	3
II. Factual and Statutory Background	3
III. Threshold Procedural Requirements	5
IV. Argument	5
A. The EAB must dismiss the Designation Decision pursuant to 40 C.F.R. § 122.26 (f)(5) due the Regional Administrator’s failure to issue his Designation Decision within 90 days.	7
B. The Regional Administrator fails to establish that the County’s alleged discharges were to jurisdictional waters of the United States, a pre-requisite to establishing NPDES and MS4 jurisdiction.	8
C. The Regional Administrator’s Designation Decision was in error, an abuse of discretion, and contrary to 40 C.F.R. § 124.13 and 40 C.F.R. § 124.17(b).	13
1. The Regional Administrator's use of the State of New Mexico's 2016-2018 and 2018-2020 Clean Water Act 303D/305B Reports was in error and not in accordance with law.	14
2. The Regional Administrator improperly accepted new public comments from the NMED on October 18, 2019 which was in error, an abuse of discretion, and contrary to law.	15
3. The Regional Administrator’s use of the Buckman Direct Diversion Project June 7, 2019 Letter was in error, an abuse of discretion, and not in accordance with law.	16
D. The Regional Administrator improperly used data and information that does not reasonably or rationally support the assertion of the Regional Administrator that County’s alleged discharges “contribute to” exceedances of water quality standards.	18
V. Conclusion	22
VI. List of Attachments	23
VII. Request for Oral Argument	23
VIII. Statement of Compliance with the Word/Page Limitation	23
IX. Certificate of Service	24

TABLE OF AUTHORITIES

Cases

Blue Water Baltimore, Civil Action No. GLR-17-1253, 2019 U.S. Dist. LEXIS 47689..... 19
City of Taunton v. United States EPA..... 19
City of Taunton v. United States EPA, 895 F.3d 120, 131 (1st Cir. 2018) 18
Decker v. Nw. Env'tl. Def. Ctr., 568 U.S. 597, 602 (2013)..... 9
In re Upper Blackstone Water Pollution Abatement Dist., 14 E.A.D. 577, 599 n.29 (EAB 2010)
..... 19
Rapanos v. United States, 547 U.S. 715 (2006)..... 9
Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, 531 U.S. 159
(2001) 9
U.S. v. Riverside Bayview, 474 U.S. 121 (1985) 9

Statutes

33 U.S.C. § 1342(16) 9
33 U.S.C.S. § 1342(a)(1) 9
33 U.S.C.S. § 1362(12)..... 9

Other Authorities

55 Fed. Reg. 47990, 47996 (Nov. 16, 1990)..... 9, 15
84 FR 56626, 56668..... 13

Rules

40 C.F.R § 122.26(a)(9)(i)(D)..... 19
40 C.F.R. § 122.2 8, 12
40 C.F.R. § 122.32(a)(1)..... 7
40 C.F.R. § 124.19(a)..... 3, 5
40 C.F.R. §124.14 6
40 C.F.R.§ 124.13 17

PETITION FOR REVIEW OF

U.S. ENVIRONMENTAL PROTECTION AGENCY REGION VI ADMINISTRATOR *DESIGNATION DECISION* AND RECORD OF DECISION IN RESPONSE TO PETITION BY AMIGOS BRAVOS FOR A DETERMINATION THAT STORMWATER DISCHARGES IN LOS ALAMOS COUNTY CONTRIBUTE TO WATER QUALITY STANDARDS VIOLATIONS AND REQUIRE CLEAN WATER ACT PERMITS

I. Introduction

Pursuant to 40 C.F.R. § 124.19(a), the Incorporated County of Los Alamos, New Mexico (“County” or “Petitioner”) herein petitions the U.S. Environmental Protection Agency (“EPA”), Environmental Appeals Board (“EAB” or “Board”) for review of a decision by the U.S. EPA VI, Regional Administrator dated December 16, 2019, and titled “*Designation Decision and Record of Decision in Response to Petition by Amigos Bravos for a Determination that Stormwater Discharges in Los Alamos County Contribute to Water Quality Standards Violations and Require Clean Water Act Permits*” (“Designation Decision”) and as attached hereto as Attachment 1. The Designation Decision was served on the County by the Regional Administrator through the U.S. Mail sent on December 18, 2019 and received by the County on December 24, 2019. *Ibid.*

II. Factual and Statutory Background

This matter began in June 2014, when Amigos Bravos, a non-governmental river conservation organization, submitted a petition to the Regional Administrator of U.S. EPA Region VI (“Regional Administrator”) under 33 U.S.C.S. § 1342(p)(2) and 40 C.F.R. § 122.26(a)(9)(i)(D), also known as the “Residual Designation Rule”, to request that the Regional Administrator issue a determination that the County’s and other parties stormwater discharges “...contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the

United States”, hereafter the “Amigos Bravos Petition.” Attachment 1, Appendix 3. As provided in the *Designation Decision*, page 1, the Amigos Bravos Petition was received by U.S. EPA, Region VI, on June 18, 2014. Attachment 1, Designation Decision.

On March 17, 2015, the Regional Administrator published notice in the Federal Register (80 FR 13852) of his preliminary determination (hereafter “Preliminary Determination”) that “discharges of storm water from small municipal separate storm sewer systems (MS4s) on LANL property and urban portions of Los Alamos County contribute to violations of one or more NM WQS.” Attachment 1, Designation Decision, page 1. The Preliminary Determination required that interested parties submit comments on or before April 16, 2015. This deadline was later extended to June 15, 2015. *Id.*

On June 15, 2015, the County submitted its public comments to the Preliminary Determination, titled “*Incorporated County of Los Alamos Comments to Notice of Availability of Preliminary Determination of Certain Stormwater Discharges in the State of New Mexico under the National Pollutant Discharge Elimination System of the Clean Water Act [FRL-9924-58-REGION-6J]*”, hereafter “LAC Comment”, to the Preliminary Determination. *See* Attachment 1, Appendix 3, LAC Comment.

On December 16, 2019, which was 2,004 days, or 5 years and 5 months later, the Regional Administrator issued his final Designation Decision, contrary to 40 C.F.R. § 122.26(f)(5).

Attachment 1. This was only after Amigos Bravos filed a petition in the U.S. District Court, District of New Mexico, Case No. 1:19-cv-852, to compel the Regional Administrator to issue his decision.

III. Threshold Procedural Requirements

Petitioner satisfies the threshold requirements for filing a petition for review under 40 C.F.R. Part 124, to wit:

This Petition is timely filed by the County, as Petitioner, pursuant to 40 C.F.R. § 124.19(a)(3). The Regional Administrator dated his Designation Decision on December 16, 2019, and served notice of the issuance of the Designation Decision to the County via U.S. Mail sent December 18, 2019. Attachment 1.

The County has standing in this matter as it submitted public comment on the Preliminary Determination and is one of the three (3) entities designated in the Regional Administrator's Designation Decision to obtain a NPDES MS4 permit. *See* Attachment 1, Cover Letter, page 1 and Designation Decision, pages 10-11. Further, the County has preserved its challenges in this Petition as the County raised its challenges in the County's LAC Comment submitted on June 15, 2015. Attachment 1, Appendices 2 and 3. In addition to these substantive challenges, the County raises fatal jurisdictional and procedural errors by the Regional Administrator in issuing his final *Designation Decision*.

IV. Argument

In addition to the County's prior submitted comments, and reserving any further rights of redress, the County challenges the Regional Administrator's Designation Decision as follows:

1. The Regional Administrator's Designation Decision is improper, an abuse of discretion and not in accordance with law as the Designation Decision, contrary to 40 C.F.R. § 122.26(f)(5) (requiring a final decision within 90 days), was issued more than 2,006 days, or 5 years and 5 months, after the submission of the Amigos Bravos Petition;

2. The Regional Administrator's Designation Decision is clearly in error and an abuse of discretion as the Regional Administrator failed to establish jurisdiction or provide sufficient evidence supported by an articulated rational decision in light of all information in the record, that the County discharges stormwater into "waters of the United States" which is a condition precedent to establish that the EPA and the Regional Administrator has jurisdiction;

3. The Regional Administrator's Designation Decision abused his discretion and acted contrary to law, specifically 40 C.F.R. § 124.13, 40 C.F.R. §124.14, and 40 C.F.R. § 124.17(b) by: 1) considering new evidence and information that was not a "new point" or "new material" from the public comment; and 2) receiving, considering, and relying upon additional public comment from the New Mexico Environment Department ("NMED"), a commenting party to the Preliminary Determination, some 1,586 days (4 years and 4 months) after the close of public comment, without properly reopening public comment in accordance with 40 C.F.R. §124.14, and which materially and substantively changed NMED's prior submitted position; and

4. The Regional Administrator abused his discretion, in a manner not in accordance with law and in a conclusory, unsupported manner, provided insufficient data and information to rationally and reasonably support the conclusion that the County was contributing to water quality violations in an articulated manner.

A. The EAB must dismiss the Designation Decision pursuant to 40 C.F.R. § 122.26 (f)(5) due the Regional Administrator’s failure to issue his Designation Decision within 90 days.

The EAB must reverse and remand the Designation Decision for dismissal because the Regional Administrator abused his discretion and acted contrary to law when he failed to issue his Designation Decision within 90 days from the date of receipt of the Amigos Bravos petition as is required by 40 C.F.R. § 122.26(f)(5). 40 C.F.R. § 122.26(f)(5) (“The Director shall make a final determination on any petition received under this section within 90 days after receiving the petition”); *see also* Attachment 1, Designation Decision, page 1, and Appendix 2, Amigos Bravos Petition, page 3.

Pursuant to the legal constraints placed upon the Regional Administrator under the regulations, the Regional Administrator was required to make a final determination within 90 days after receiving the petition. The 90-day deadline, not the 180-day deadline, is applicable because, as provided in the Designation Decision, the Regional Administrator was unable to designate the County as a “small MS4” under 40 C.F.R. § 122.32(a)(1). *See* Attachment 1, Appendix 5, Response to Comments, page 3-4 (“EPA confirms that Los Alamos County does not contain any “urbanized areas” as defined by the Census Bureau in the 2010 Decennial Census.”); *see also* Attachment 1, Appendix 2, Amigos Bravos Petition. Thus, pursuant to 40 C.F.R. § 122.26(f)(5), the Regional Administrator had a maximum of 90 days, or until Monday, September 29, 2014, to issue a final determination on the Amigos Bravos Petition.

The Amigos Bravos Petition was submitted to the Regional Administrator on June 30, 2014. *See* Attachment 1, Section I, Page 1; *see also* Attachment 1, Appendix 2. The final Designation Decision was not issued until December 16, 2019, 1,995 days, or 5 years and 5 months, after the 40 C.F.R. § 122.26(f)(5) 90-day deadline. Attachment 1, Cover Letter, page 1.

Importantly, had the Regional Administrator issued his final Designation Decision within the 90-day window, the “waters of the United States” rule (40 C.F.R. § 122.2) then in affect would have materially supported the County’s position that the water sources in question were beyond the jurisdiction of the EPA and the Regional Administrator.

The Regional Administrator’s Designation Decision is contrary to law as it is not in accordance with 40 C.F.R. § 122.26(f)(5). The EAB should therefore reverse and remand the Petition for dismissal.

B. The Regional Administrator fails to establish that the County’s alleged discharges were to jurisdictional waters of the United States, a pre-requisite to establishing NPDES and MS4 jurisdiction.

The Regional Administrator’s Designation Decision was clearly in error, contrary to the evidence, and a abuse of discretion, as there is insufficient rational evidence that the alleged County stormwater discharges are to tributaries that qualify under 40 C.F.R. § 122.2 as “waters of the United States.”

As provided in the LAC Comment, the County raised, in great detail, the jurisdictional issue of whether a NPDES MS4 permit was appropriate, as none of the alleged stormwater discharges were to “waters of the United States” as defined by the EPA in 40 C.F.R. § 122.2. *See* Attachment 1, Appendix 3, LAC Comment.

The County first challenged the Regional Administrator’s Preliminary Designation because in order for EPA and the Regional Administrator to assert federal jurisdiction and satisfy the NPDES permit requirements, the Regional Administrator must first establish by some “considered judgement” with an *articulated and clear reason* find that point source stormwater discharges of the County reach federal jurisdictional waters. *Id.* (*emphasis added*). A determination that the

alleged discharges of the County are to “waters of the United States” is a condition precedent to establish federal jurisdiction under 33 U.S.C.S. § 1342(p)(2) and 40 C.F.R. § 122.26(a)(9)(i)(D).

The definition of “‘discharge of a pollutant’ and the term ‘discharge of pollutants’ each means (A) any addition of any pollutant *to navigable waters from any point source*, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.” See 33 U.S.C.S. § 1362(12)(emphasis added); see also 33 U.S.C. § 1342(16)(“The term “discharge” when used without qualification includes a discharge of a pollutant, and a discharge of pollutants.”).

Where the proposed NPDES permit is for discharge of stormwater, the Regional Administrator may require a permit where the Regional Administrator “...determines that the stormwater *discharge* contributes to a violation of a water quality standard or is a significant contributor of pollutants to *waters of the United States*.” 33 U.S.C.S. § 1342(p)(2)(E) (*emphasis added*); see also 40 C.F.R. § 122.26(a)(9)(i)(D); see also 33 U.S.C.S. § 1342(p)(2), 1362(14) (A municipal separate storm sewer system is a "point source.").

Thus, pursuant to the definition of what constitutes a “discharge” from a “point source” under federal law and prior to requiring a NPDES MS4 permit, the alleged County discharges must be found by the Regional Administrator to be a discharge to federal navigable waters. See 33 U.S.C.S. § 1362(12) and (16); see also *U.S. v. Riverside Bayview*, 474 U.S. 121 (1985), *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001), and *Rapanos v. United States*, 547 U.S. 715 (2006); 55 Fed. Reg. 47990, 47996 (Nov. 16, 1990) (stating that the MS4 permit requirement "only covers storm water discharges from point sources") and *Decker v. Nw. Env'tl. Def. Ctr.*, 568 U.S. 597, 602 (2013) (stating that the Clean Water Act only regulates discharges from point sources to waters of the United States).

Even the Amigos Bravos Petition recognized this fundamental jurisdictional requirement. See Attachment 1, Appendix 2, *Amigos Bravos Petition*, pages 1 and 2 (“In order to ensure that such water quality standards will be achieved, no person may *discharge any pollutant into waters of the United States from a point source without a National Pollutant Discharge Elimination System (NPDES) permit...* EPA’s Clean Water Act regulations further specify that “discharge of a pollutant” includes “additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man.”) (emphasis added).

In response to the County’s challenge of this jurisdictional question, and as raised in its LAC Comment, the Regional Administrator, in a conclusory manner responded as follows:

“EPA disagrees with the commenter's assertions. The information available to EPA demonstrates that stormwater from Los Alamos County flows and conveys pollutants to the Rio Grande, which is a traditional navigable water and thus a water of the United States under the CWA and federal regulations... See also LANL's PCB and Metals Reports. The fact that stormwater from Los Alamos County flows to the Rio Grande is supported by NMED's October 18, 2019 letter to EPA in support of this designation. That letter states that stormwater studies conducted by both LANL and NMED "confirm that elevated levels of metals and PCBs are contained in urban stormwater leaving the impervious areas of the Lab and the County. As these areas discharge into waters of discharge to what later becomes a drinking water source for irrigation uses along the Rio Grande, NMED underscores the importance of this designation to assist in the protection of human health and the environment. Letter dated October 18, 2019 from James C. Kenney, Cabinet Secretary, NMED to Ken McQueen, Regional Administrator, USEPA Region 6, included in Appendix 3... The Buckman Direct Diversion Project (BDD), a joint regional project of the City of Santa Fe and Santa Fe County, submitted a letter to the Governor of New Mexico and NMED expressing concern over pollutants in stormwater discharges flowing to the Rio Grande and the negative impacts of these discharges ("BDD letter").³ In that letter, representatives of the City and the County state that the BDD is located on the Rio Grande "downstream of the Cities of Espanola and Los Alamos as well as a portion of Los Alamos National Laboratory that is in the LA/Pueblo canyon watershed. Due to its location on the Rio Grande the BDD has unique concerns regarding the water quality of the Rio Grande and runoff coming from the Pajarito Plateau, where the City of Los Alamos and the Los Alamos National Laboratory (LANL) are located." BDD letter, page 1. The BDD letter states that because stormwater flows from Los Alamos County to the Rio Grande and because the BDD diverts water from the Rio Grande for use as drinking water for the Cities

of Santa Fe and Albuquerque, ‘the BDD has had to cease diversions when it received notification that potentially contaminated surface water from the Pajarito Plateau canyons would reach the Rio Grande upstream of the BDD.’ BDD letter, page 2.”

Appendix 1, *Designation Decision*, Appendix 5, pages 7-8 (emphasis added).¹

The Regional Administrator here, clearly in error, uses only two (2) documents to counter the County’s position that the Regional Administrator does not have federal jurisdiction over the alleged County stormwater discharges: the NMED October 18, 2019 letter and the June 7, 2019 Buckman Direct Diversion Project letter.

Neither of these two documents provide or establish, with any reasonable clarity, the basis supporting his conclusion including the significance of the crucial facts he relied upon when reaching his conclusion. The two documents show that the Regional Administrator only relied upon the opinions of others. The Regional Administrator’s conclusory statement in his response to comments, Attachment 1, Appendix 5, page 7-8, simply provides “[t]he information available to EPA demonstrates that stormwater from Los Alamos County flows and conveys pollutants to the Rio Grande, which is a traditional navigable water and thus a water of the United States under the CWA and federal regulations.” In support of this conclusion the Regional Administrator then provides that “[t]he fact that stormwater from Los Alamos County *flows to the Rio Grande is supported by NMED’s October 18, 2019 letter to EPA* in support of this designation.” *Id.*, at 7 (emphasis added). However, neither of these documents are sufficient to establish that the County’s alleged discharges are to “waters of the United States.”

In review of the NMED’s October 18, 2019 letter (“NMED Letter”), it is only one page long with four pages of tables showing water quality segments, “WQS” reference, impairments, and

¹ The letter from the Buckman Direct Diversion Project to the New Mexico’s Governor was published on June 7, 2019. See Footnote 4 below.

TMDL/4b data from the Department's 2018-2020 303D/305B Report. *See* Attachment 2. The only reference to any discharge from the County is as follows,

“As these areas discharge to what later becomes a drinking water source for both the City of Santa Fe and the City of Albuquerque, in addition to a source for irrigation uses along *the Rio Grande*, NMED underscores the importance of this designation to assist in the protection of human health and the environment.

Attachment 1, Appendix 5, page 7-8 (emphasis added). Nothing in this NMED letter however provides any clear, convincing, or articulated rational basis for the Regional Administrator's finding that the County's stormwater discharges are to “waters of the United States” as defined under 40 C.F.R. § 122.2 and required as a condition precedent to establish federal jurisdiction.

The Regional Administrator, then attempts to use the June 7, 2019 Buckman Direct Diversion Project letter (“Buckman Letter”), attached hereto as Attachment 3, to show that the alleged County discharges are to federal jurisdictional “waters of the United States.” However, looking to the Buckman Letter, only three pages long, the Regional Administrator states in support of his jurisdictional finding that,

“The BDD letter states that because stormwater flows from Los Alamos County to the Rio Grande and because the BDD diverts water from the Rio Grande for use as drinking water for the Cities of Santa Fe and Albuquerque, ‘the BDD has had to cease diversions when it received notification that potentially contaminated surface water from the Pajarito Plateau canyons would reach the Rio Grande upstream of the BDD.’”

See Attachment 1, Appendix 5, Response to Comments, page 8; *see also* Attachment 3, page 2. These conclusory statements by the Regional Administrator and use of even further conclusory letters, clearly in error, misapplies and fails to meet the required legal standard of review, and does not provide any rational, reasonable or articulated basis for the Regional Administrator's assertion

of federal jurisdiction under 33 U.S.C.S. § 1342(p)(2) or 40 C.F.R. § 122.26(a)(9)(i)(D) to require a NPDES MS4 permit. The Regional Administrator fails to demonstrate that the County’s alleged stormwater discharges are to “waters of the United States.”

The NMED Letter and Buckman Letter, as used by the Regional Administrator, are improper and insufficient to provide the necessary elements to establish federal authority over local and intra-state waters. Moreover, in his Designation Decision, the Regional Administrator fails to articulate which “waters of the United States” rule he used in his analysis to determine the County’s alleged discharges are to “waters of the United States”, thereby subjecting the County to federal regulation. It cannot be determined whether the Regional Administrator applied the 1) pre-2015 “waters of the United States” rule in effect during the 90-day timeline in which the Regional Administrator’s final decision was required; 2) the 2015 “waters of the United States” rule in effect at the time the Regional Administrator’s Designation Decision was made on December 16, 2019; or 3) the current “waters of the United States” rule as provided in 84 FR 56626, 56668, dated October 22, 2019, and effective December 23, 2019, 5 days after the Designation Decision was served. By failing to provide which rule was used in the Designation Decision, the Regional Administrator necessarily fails to articulate clearly the basis of EPA’s and the Regional Administrator’s jurisdiction.

C. The Regional Administrator’s Designation Decision was in error, an abuse of discretion, and contrary to 40 C.F.R. § 124.13 and 40 C.F.R. § 124.17(b).

The Regional Administrator acted in error, abused his discretion, and contrary to 40 C.F.R. § 124.13 and 40 C.F.R. § 124.17(b) by considering new evidence and information that was not a “new point” or “new material” raised during the Preliminary Determination public comments, specifically: 1) the State of New Mexico's 2016-2018 and 2018-2020 Clean Water Act 303D/305B

Reports; 2) the inappropriately submitted additional public comments from the New Mexico Environment Department (“NMED”); and 3) the Buckman Letter.

1. The Regional Administrator's use of the State of New Mexico's 2016-2018 and 2018-2020 Clean Water Act 303D/305B Reports was in error and not in accordance with law.

As provided in the Designation Decision, the public comment period for the *Preliminary Designation Decision* (80 FR 13852) closed on June 15, 2015. As provided in Attachment 1, Appendix 3 of the *Designation Decision*, multiple parties submitted public comment on the proposed action. Part of the comments, including that of the Petitioner Amigos Bravos, referenced the State’s *Clean Water Act 2012-2014 and 2014-2016 303D/305B Reports*. At that time, and until the close of public comment period, only the State’s 2014-2016 and prior years’ 303D/305B reports were available for use in public comment period.

However, as provided in the Designation Decision, the Regional Administrator clearly states that he used and considered the State’s *2016-2018 303D/305B Report*² *as well as the 2018-2020 303D/305B Reports*³ in his final Designation Decision. *See* Attachment 1, Section III, A. 1., page 6-8 and Appendix 5, Response to Public Comments.

The Regional Administrator’s use and consideration of the State’s 2016-2018 and 2018-2020 303D/305B Reports by the Regional Administrator clearly constitutes error and an abuse of discretion as the State’s 2016-2018 and 2018-2020 303D/305B Reports were: (1) not “new points” or “new material” raised during the public comment period as provided in 40 C.F.R. § 124.17(b);

² EPA Regional VI approved the 2016-2018 303D/305B Report on September 23, 2016. EPA approval letter available on the NMED’s website at <https://www.env.nm.gov/wp-content/uploads/sites/25/2019/04/EPA2016-2018IRapprovalletterSept232016.pdf>. Last visited January 14, 2020.

³ EPA Region VI approved the 2018-2020 303D/305B Report on November 1, 2018. EPA approval letter available on NMED’s website at <https://www.env.nm.gov/wp-content/uploads/sites/25/2018/03/EPA-2018-IR-Approval-Letter.pdf>. Last visited January 14, 2020.

and (2) the 2016-2018 and the 2018-2020 Reports were not even published or available until 1 year and 8 days, and 3 years, 1 month and 17 days, respectively, from the end of the public comment deadline of June 15, 2015.

2. *The Regional Administrator improperly accepted new public comments from the NMED on October 18, 2019 which was in error, an abuse of discretion, and contrary to law.*

In addition to the improperly submitted and considered 303D/305B reports discussed above, it was clear error and an abuse of discretion for the Regional Administrator to consider and rely upon the October 18, 2019 NMED Letter in his Designation Decision. *See* Attachment 2. The NMED Letter was submitted to the Regional Administrator 4 years, 4 months, and 3 days from the end of the public comment period, but only 59 days before the December 16, 2019 Designation Decision.

Although 40 C.F.R. § 124.17(b) provides that the Regional Administrator may comment and review data on “new points” and “new information” *as raised in the public comment period*, here the Regional Administrator accepted and used the NMED Letter in his decision, even though the letter raised new points and new information than that submitted by NMED during the public comment period as it summarily reversed NMED’s prior public comment. *See* Attachment 2, Attachment A. The acceptance and use of a new and additional public comment, which was only shared between the Regional Administrator and NMED and to none of the other participants until the Designation Decision was issued was contrary to law, unfair, clearly in error, and an abuse of his discretion. Such acceptance of a new public comments so far after the close of the public comment period is in error and an abuse of his discretion. *See* 40 C.F.R. § 124.11 (“During the public comment period...[an] interested person may submit written comments on the draft permit....”); *see also* Attachment 1, Designation Decision, page 1 (Public comment ended June 15, 2015).

This NMED letter, containing a reversal in position of the NMED, was unrelated to a “new point” or “new material” raised in the public comment period during 2014-2015. *Compare* Attachment 1, Appendix 3, NMED June 15, 2015 to Attachment 2. Moreover, the 2019 NMED Letter substantively and materially changed NMED’s position in the proceedings from one of opposition of the Designation Decision to one of support. Neither NMED nor EPA forwarded or provided the NMED Letter to the County or other parties in the proceedings, nor did the EPA reopen the public comment period.

As shown in the Designation Decision, Response to Comments, the NMED Letter is specifically used and relied upon by the Regional Administrator to establish federal jurisdiction. *See* Attachment 1, Appendix 5, pages 7-8 (“The fact that stormwater conveyance from Los Alamos County flows to the Rio Grande is supported by NMED's October 18, 2019 letter to EPA in support of this designation.”).

The use of the NMED Letter in the Designation Decision, as well as the failure by NMED and the Regional Administrator to provide a copy of the letter with such a material change in position of the NMED to the other commenting parties is a stark and unfair abuse of process constituting clear error. The County therefore requests that the EAB find that the Regional Administrator abused his discretion and acted improperly and not in accordance with law and reverse and remand the *Designation Decision* for dismissal.

3. The Regional Administrator’s use of the Buckman Direct Diversion Project June 7, 2019 Letter was in error, an abuse of discretion, and not in accordance with law.

Similar to the Regional Administrator’s improper use of the State’s 2016-2018 and 2018-2020 303D/305B Reports and the NMED Letter, the Regional Administrator committed a clear and substantial error by considering and relying upon the June 7, 2019 Buckman Letter. *See*

Attachment 3; *see also* Attachment 1, *Designation Decision* and Appendix 5, Response to Public Comment, pages 7-8.

The Regional Administrator improperly used the 2019 Buckman Letter to claim support for his unfounded assertion of federal jurisdiction as follows: “[d]ue to its location on the Rio Grande the BDD has unique concerns regarding the water quality of the Rio Grande and runoff coming from the Pajarito Plateau, where the City of Los Alamos and the Los Alamos National Laboratory (LANL) are located.” *Id.*

Similar to the State’s 2016-2018 and 2018-2020 303D/305B Reports, and the NMED Letter, the Regional Administrator acted improperly, in error, and not in accordance with law by considering the Buckman Letter which was obtained after the close of the public comment deadline (and the deadline for the decision) and was not related to a “new point” or “new material” as raised during the public comment period in 2014-2015. In an attempt to establish federal jurisdiction, the Regional Administrator improperly relied upon the Buckman Letter, a uniquely governmental decision not to be outsourced to others. Attachment 3, page 1.

Such action is clearly in error and in violation of 40 C.F.R.§ 124.13 and 40 C.F.R. § 124.17. The County therefore request that the EAB reverse and remand the Designation Decision for dismissal.

It is acknowledged that the Regional Administrator may, in some limited instances, be allowed to receive and address additional material and information after the close of public comments under 40 C.F.R. § 124.17, if and only if such materials and information address and are related to “new points” or “new material” received during the original public comment period. This provision is limited to a specific matter raised by one of the parties who submitted comments in the public

comment period. Where the Regional Administrator reviews and relies upon newer water quality reports, ones that are far outside the 90-day decision deadline and years beyond the public comment period, to further attempt to assert jurisdiction (*see* Attachment 1, Designation Decision, pages 6-8), is an abuse of discretion, clearly erroneous, and unfair to the other commenters. More egregious is the reliance on third parties to make a decision which is solely the Regional Administrator's responsibility.

Not only has the Regional Administrator clearly erred, abused his discretion and acted contrary to law by considering new evidence and information that was not a "new point" or "new material" from the public comment, but he received, considered, and relied upon additional public comment while failing to apply the required legal standard. It is an error and an abuse of discretion to receive additional comment for inclusion into the record which did not address a "new point" or "new material" especially when the decision is rendered years after the deadline for the decision. *See* 40 C.F.R. § 124.17(b) ("If new points are raised or new material supplied during the public comment period, EPA may document its response to those matters by adding new materials to the administrative record.") and 40 C.F.R. § 124.13; *see also City of Taunton v. United States EPA*, 895 F.3d 120, 131 (1st Cir. 2018).

D. The Regional Administrator improperly used data and information that does not reasonably or rationally support the assertion of the Regional Administrator that County's alleged discharges "contribute to" exceedances of water quality standards.

The Designation Decision is clearly in error because the Regional Administrator had insufficient evidence to rationally and reasonably determine in an articulated and reviewable manner subject to the appropriate standard that the County's stormwater discharges "...contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of

the United States.” See 40 C.F.R § 122.26(a)(9)(i)(D); see also *Blue Water Baltimore*, Civil Action No. GLR-17-1253, 2019 U.S. Dist. LEXIS 47689, at 15 (D. Md. Mar. 22, 2019).

As the 1st Circuit Court of Appeals explained in *City of Taunton v. United States EPA*, a NPDES permit is proper when EPA determines that pollutants “...may be discharged at a level which will cause, have the *reasonable potential* to cause, or contribute to an excursion...”, the EPA has interpreted “‘reasonable potential’ to mean ‘some degree of certainty greater than a mere possibility.’” 895 F. 3d 120, 133 (1st Cir. 2018) citing *In re Upper Blackstone Water Pollution Abatement Dist.*, 14 E.A.D. 577, 599 n.29 (EAB 2010)(emphasis added); see also 40 C.F.R. § 122.44(d)(1).

The County, in its LAC Comment, challenged the veracity and sufficiency of the scientific data used by the Regional Administrator to find that the County’s alleged stormwater discharges were contributing to water quality violations. See Attachment 1, Appendix 3, LAC Comment.

In his *Designation Decision*, the Regional Administrator found, “after review of available information” that “...EPA has determined that storm water discharges from MS4s located in the portion of Los Alamos County within the Los Alamos Urban Cluster and on LANL property within Los Alamos County and Santa Fe County are contributing to violations of NM WQS.” See Attachment 1, Designation Decision, Sect. III, page 6. The Regional Administrator then provides that he “...examined the available data based on two factors: 1) evidence of water quality impairment; and 2) evidence that pollutant levels in the stormwater discharges are contributing to those impairments.” *Id.*

Using the State’s 303B/305D Reports for 2012-2014, 2014-2016 *and the improper 2016-2018 and 2018-202 303B/305D Reports*⁴, the Regional Administrator erroneously “...determined that the receiving waters for at least some of the stormwater discharges from LANL and the Los Alamos Urban Cluster are listed as impaired on the NM CWA § 303(d) list.” Attachment 1, *Designation Decision*, Section III.A.1, page 8 (emphasis added). The Regional Administrator’s determination was without a proper basis and without some degree of certainty greater than a mere possibility that the County’s alleged discharges contribution to a violation of WQS.

Next, the Regional Administrator “examined the available data to determine whether at least some of the stormwater discharges from Los Alamos, White Rock, and LANL have maximum or median sampling results exceeding one or more of the NM's WQS for a parameter that was listed as a cause of impairment on the state's CWA section 303(d) list.” *Id.* (emphasis added).

Then in a conclusory and unsupported manner, and contrary to law, the Regional Administrator erroneously states that, “[b]ecause waterbodies listed as impaired for a pollutant or pollutants have no remaining assimilative capacity for those pollutants, maximum or median sampling results exceeding the state's WQS for one or more of those pollutants indicates that those discharges contribute to a violation of that WQS.” *Id.* (emphasis added).

This is the sole and exclusive basis for the Regional Administrator’s Designation Decision. As provided *In re City of Tauton*, more than an “indication” is required; there has to be “...some degree of certainty greater than a mere possibility.” 895 F. 3d 120, 133. The Regional Administrator’s conclusory and unsupported decision fails to identify and articulate which

⁴ See footnotes 2 and 3 above.

evidence establishes to a “degree of certainty greater than a mere possibility” the factual link between local water body impairments and the County’s alleged stormwater discharges.

As related to PCB exceedances in the local water bodies, the Regional Administrator, in again another conclusory and unsupported manner contrary to law, then stated that, “[b]ased on review of the data from the LANL PCB report, EPA also confirmed that heightened PCB concentrations above 100 ng/L were measured in Los Alamos County urban runoff. *The higher concentrations are associated with the urban stormwater from the contribution of additional diffuse local sources in the urban environment*” [sic]” *Id.*, page 9 (emphasis added). This last sentence, without further explanation and use of a report generated by LANL for an entirely different purpose, is the sole basis for the Regional Administrator’s decision to designate the County as MS4 for exceedances of PCBs in local water segments. No science-based link or rational articulated explanation pursuant to the applicable standard is provided by the Regional Administrator to show that there is a reasonable and supportable link between the County and PCB water quality exceedances. *See also* Attachment 1, Appendix 3, LAC Comment, pages 6-7.

As to metal exceedances in local water bodies, the Regional Administrator, provides that “[b]ased on an *independent review of the data*⁵ included in the LANL Metals Report...as opposed to the conclusions reached by LANL within the report, *EPA determined that storm water discharges from MS4s located in the portion of Los Alamos County* within the Los Alamos Urban Cluster and on LANL property within Los Alamos County and Santa Fe County *are contributing to exceedances of one or more NM WQS and therefore meet the criteria for designation.*” *Id.* (emphasis added). This conclusory and unsupported finding is erroneously based on the Regional

⁵ The sources and the methods of the “independent review” are not identified.

Administrator's claim that "further analysis" of "the urban runoff samples exceeded at least one NM WQS for aluminum, cadmium, copper, or zinc." *Id.* Even though the Regional Administrator stated, as noted here, that it conducted its own "independent review", the Administrator then conveniently only uses the same LANL Metals report to make his determination that there is a link the PCB and metals to runoff from "urban areas of the Pajarito Plateau." *Id.* This unsupported statement however does not provide any scientific analysis or nexus between the County and in-stream PCB exceedances.

In the Regional Administrator's final conclusion on the designation, the Regional Administrator states that,

"[b]ased on the Agency's independent review of all available information, EPA finds that pollutants associated with impairment are present at levels above WQS in stormwater discharges from MS4s located in the portion of Los Alamos County, New Mexico within the Los Alamos Urban Cluster as defined by the latest Decennial Census and on Los Alamos National Laboratory property located within Los Alamos County and Santa Fe County, New Mexico. As such, EPA determines that these discharges contribute to the impairments listed by the State."

Id., page 10 (emphasis added).

The Regional Administrator was clearly in error and not in accordance with law because his Designation Decision is made with only conclusory, unsupported, and unarticulated reasoning. The County therefore requests that the Board reverse and remand for dismissal the Regional Administrator's Designation Decision.

V. Conclusion

The County requests that the EAB reverse and remand for dismissal the Regional Administrator's Designation Decision for the all above-mentioned reasons.

VI. List of Attachments

The following documents are provided by Petitioner as follows:

1. “Designation Decision and Record of Decision in Response to Petition by Amigos Bravos for a Determination that Stormwater Discharges in Los Alamos County Contribute to Water Quality Standards Violations and Require Clean Water Act Permits” by U.S. EPA, Region VI, Regional Administrator (December 16, 2019).

2. Letter from James Kenny, Cabinet Secretary of the New Mexico Environment Department dated October 18, 2019 (re: Los Alamos Residual Designation Petition).

3. Letter from Anna Hamilton, Santa Fe County Commissioner and Chair, Buckman Direct Diversion Project Board, to Michelle Lujan Grisham, Governor, New Mexico dated June 7, 2019 (re: Buckman Direct Diversion Project Board Water Quality Priorities).

VII. Request for Oral Argument

Petitioner, County, respectfully requests oral argument before the Environmental Appeals Board on its petition for review of the Regional Administrator’s Designation Decision because it believes oral argument will be of assistance to the Board.

VIII. Statement of Compliance with the Word/Page Limitation

In accordance with 40 C.F.R. § 124.19(d)(1)(iv) & (d)(3), I hereby certify that this Petition does not exceed 14,000 words. Not including the transmittal letter, caption, table of contents, table of authorities, figures, signature block, table of attachments, statement of compliance with the word limitation, and certification of service, this Petition contains 6,007 words.

IX. Certificate of Service

I hereby certify that on this the 17th day of January 2020 a copy of the foregoing Petition for Review was served on Respondent and the parties to the underlying action, identified below, by U.S. First Class mail:

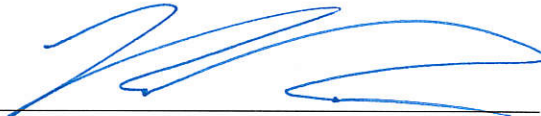
U.S. Environment Protection Agency

Ken McQueen, Regional Administrator

U.S. EPA Region VI

1445 Ross Avenue, Suite 1200

Dallas, Texas 75202



Kevin J. Powers, Assistant County Attorney
Incorporated County of Los Alamos, New Mexico
1000 Central Avenue, Suite 340
Los Alamos, New Mexico 87544
Telephone: (505)662-8020
Email: kevin.powers@lacnm.us,

ATTACHMENT 1

***“U.S. ENVIRONMENTAL PROTECTION AGENCY REGION VI
ADMINISTRATOR DESIGNATION DECISION AND RECORD OF
DECISION IN RESPONSE TO PETITION BY AMIGOS BRAVOS FOR A
DETERMINATION THAT STORMWATER DISCHARGES IN LOS ALAMOS
COUNTY CONTRIBUTE TO WATER QUALITY STANDARDS VIOLATIONS
AND REQUIRE CLEAN WATER ACT PERMITS”***

(December 16, 2019)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

Office of the Regional Administrator

DEC 16 2019

Harry Burgess
County Administrator
Los Alamos County
1000 Central Avenue, Suite 350
Los Alamos, NM 87544

Re: A Petition by Amigos Bravos for a Determination that Storm Water Discharges in Los Alamos County Contribute to Water Quality Standards Violations and Require a Clean Water Act Permit ("Petition")

Dear Mr. Burgess:

On June 30, 2014, Amigos Bravos filed a petition, transmitting the above referenced Petition. The Petition alleges that non de minimus stormwater discharges from Los Alamos County that are currently unregulated under the National Pollutant Discharges Elimination System (NPDES) program are contributing to exceedances of New Mexico water quality standards (WQS) in impaired waters. The Petition requests that EPA use its Residual Designation Authority under 40 CFR 122.26(a)(9)(i)(D) to require NPDES permit coverage for those discharges pursuant to Section 402(p) of the Clean Water Act.

After careful analysis of the Petition, comments on EPA's Preliminary Designation (March 17, 2015, 80 FR 13852), and all available information, the Regional Administrator of EPA Region 6 hereby designates for NPDES permitting as regulated small MS4s the following:

- MS4s located in the portion of Los Alamos County, New Mexico within the Los Alamos Urban Cluster as defined by the latest 2010 Decennial Census, and
- MS4s located on Los Alamos National Laboratory property located within Los Alamos County and Santa Fe County, New Mexico

EPA's designation includes MS4s owned or operated by the following entities on LANL property and in the Los Alamos Urban Cluster:

- LANL, including Triad National Security, LLC (Triad) and the U.S. Department of Energy's National Nuclear Security Administration (NNSA) located within Los Alamos County and Santa Fe County, New Mexico,
- Los Alamos County, New Mexico, located within the Los Alamos Townsite as defined by the latest 2010 decennial Census,
- New Mexico Department of Transportation (NMDOT) located within the Los Alamos Townsite as defined by the latest decennial Census, and
- NMDOT located within and interconnected with regulated LANL (Triad and NNSA)

storm sewer systems in Los Alamos and Santa Fe Counties, New Mexico.

EPA appreciates your continuing stewardship concerning our natural resources. If you have any questions, please feel free to contact me at (214 665-2100), or your staff may contact, Ms. Nasim Jahan at 214-665-7522 (jahan.nasim@epa.gov).

Sincerely yours,

A handwritten signature in blue ink that reads "Ken McQueen". The signature is fluid and cursive, with the first name "Ken" being particularly prominent.

Ken McQueen
Regional Administrator

cc: Mr. James C. Kenney
Cabinet Secretary , New Meico Environmental Department

Michael Sandoval
Cabinet Secretary, New Meico Department of Transportation

Designation Decision and Record of Decision in Response to Petition by Amigos Bravos for a Determination that Stormwater Discharges in Los Alamos County Contribute to Water Quality Standards Violations and Require Clean Water Act Permits

I. SUMMARY OF PETITION AND REGION 6 DETERMINATION

On June 30, 2014, Amigos Bravos, a river conservation organization in New Mexico, submitted to the Regional Administrator of EPA Region 6 (EPA) "A Petition by Amigos Bravos for a Determination that Stormwater Discharges in Los Alamos County Contribute to Water Quality Standards Violations and Require a Clean Water Act Permit" (the Petition). The Petition calls for a "determination, pursuant to 40 CFR § 122.26(a)(9)(i)(D), that non-de minimis, currently non-NPDES permitted stormwater discharges in Los Alamos County are contributing to violations¹ of water quality standards in certain impaired waters throughout the area, and therefore require National Pollutant Discharge Elimination System (NPDES) permits pursuant to section 402(p) of the Clean Water Act and/or designation as a municipal separate storm sewer system."

The Petition alleges that urban stormwater from Los Alamos County sites, particularly urban stormwater from developed areas at Los Alamos National Laboratory (LANL), the Los Alamos Townsite, and the community of White Rock Canyon (White Rock), is contributing to violations of New Mexico state water quality standards (NM WQS), including state WQS for polychlorinated biphenyls (PCBs), copper, zinc, and nickel, and that as a result, these sites should be subject to NPDES permitting requirements. CWA § 402(p)(2)(E) and EPA's stormwater regulations at 40 CFR § 122.26(a)(9)(i)(D) provide that the Director may designate stormwater discharges as requiring NPDES permit coverage if he or she determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a WQS or is a significant contributor of pollutants to waters of the U.S. Pursuant to 40 C.F.R. § 122.2, "[w]hen there is no 'approved State program,' and there is an EPA administered program, 'Director' means the Regional Administrator." Because the State of New Mexico is not authorized to implement a state NPDES program, EPA Region 6 administers the NPDES program in the State. In response to the Petition, Los Alamos County and LANL submitted to EPA additional information and data related to stormwater discharges in Los Alamos County on November 4, 2014 and November 24, 2014, respectively.

After careful review of the Petition and the additional information provided by LANL and Los Alamos County, as well as review of the State of New Mexico's assessment of water quality in the area, on March 17, 2015, EPA Region 6 published notice in the Federal Register (80 FR 13852) of a preliminary determination that discharges of stormwater from small municipal separate storm sewer systems (MS4s) on LANL property and urban portions of Los Alamos County contribute to violations of one or more NM WQS. The notice opened a 30-day public comment period ending April 16, 2015, on the preliminary designation decision, which EPA later extended an additional 60 days to June 15, 2015. Copies of all comments received are included in Appendix 3, and EPA's responses to those comments are included as Appendix 4.

¹ The Clean Water Act uses the term "violation" but here EPA acknowledges that under the Clean Water Act, water quality standards are not directly enforceable and means that term to refer to an exceedance of water quality standards.

Based on comments received on the preliminary designation decision from interested parties, EPA re-analyzed the data and re-examined its initial determination that the discharges of urban stormwater from the preliminarily designated areas (the discharges) contribute to violations of WQS. In addition, New Mexico Environment Department (NMED) submitted to EPA a letter dated October 18, 2019 stating that NMED supports the proposed MS4 designations for the discharges at issue.² The State's letter explains that it conducted a study and confirmed that elevated levels of metals and PCBs are contained in urban stormwater leaving the impervious areas of LANL and the County. In addition, NMED's October 18, 2019 letter raises concerns about the impacts of stormwater from the Los Alamos area on water quality in the Rio Grande, a river that leads to what later becomes a drinking water source for both the City of Santa Fe and the City of Albuquerque and is used for irrigation.

In EPA's reanalysis of the data after the public comment period, EPA considered two basic factors:

- 1) **Evidence of Water Quality Impairment:** EPA asked the question, "Were the receiving waters for stormwater discharges from the Los Alamos Urban Cluster, the White Rock Urban Cluster, and LANL listed as impaired on the State of New Mexico's latest CWA section 303(d) list of impaired waters (available online at <https://www.env.nm.gov/swqb/303d-305b/>)" Being listed on the state's 303(d) list would indicate that New Mexico already determined that waterbody to be water quality-impaired for one or more pollutants and thus there was no assimilative capacity remaining for those pollutants. As a result, discharges of stormwater containing those pollutants would contribute to the impairment if the discharge contained levels above NM's WQS.

Conclusion: As described below, at least some of the discharges from LANL and the Los Alamos Urban Cluster are to waters listed as impaired on the State of New Mexico's CWA section 303(d) list. While there are impairments listed for the Rio Grande River, which stormwater discharges from the White Rock Urban Cluster ultimately reach, the immediate receiving waters at White Rock are not listed as impaired.

- 2) **Evidence that the Level of the Pollutants of Concern in the Stormwater Discharges from Los Alamos County Are Contributing to the CWA § 303(d) Impairments:** EPA asked the question, "Did at least some of the stormwater discharges from the Los Alamos Urban Cluster, the White Rock Urban Cluster, and/or LANL have maximum or median sampling results exceeding one or more of the NM's WQS for a parameter that was listed as a cause of impairment on the state's CWA section 303(d) list?" Because waterbodies listed as impaired for a pollutant or pollutants have no remaining assimilative capacity for those pollutants, maximum or median sampling results exceeding the state's WQS for one or more of those pollutants would indicate that the discharges containing the pollutant or pollutants at levels above the WQS contribute to a violation of that WQS.

Conclusion: Available discharge data indicate that some of the stormwater discharges from the Los Alamos Urban Cluster and LANL show maximum and/or median values that exceed state WQS. No discharge data was available for stormwater discharges from the White Rock Urban Cluster. See Appendix 4.

² Letter from NMED Secretary James C. Kenney to EPA Region 6 Regional Administrator Ken McQueen dated October 18, 2019, superseding NMED letter dated June 15, 2015, which had not supported designation.

Final Designation Decision:

After re-analyzing the available data with an emphasis on the above two factors, EPA determined that the stormwater discharges from the Los Alamos Urban Cluster and LANL are contributing to violations of NM WQS. However, upon reassessment of the data, EPA has determined that there is insufficient data about the stormwater discharges from the White Rock Urban Cluster to establish that stormwater discharges from White Rock are contributing to WQS violations. A more detailed discussion of EPA's analysis and the basis for its conclusions is found below and in EPA's responses to comments in Appendix 4.

After careful analysis of the Petition, comments on the Preliminary Designation, and all available information, EPA hereby designates for NPDES permitting as regulated small MS4s the following: MS4s located in the portion of Los Alamos County, New Mexico within the Los Alamos Urban Cluster as defined by the latest Decennial Census, and MS4s located on Los Alamos National Laboratory property located within Los Alamos County and Santa Fe County, New Mexico.

EPA's designation covers MS4s owned or operated by the following entities on LANL property and in the Los Alamos Urban Cluster as stormwater discharges requiring NPDES permit coverage pursuant to 40 CFR § 122.26(a)(9)(i)(D):

1. LANL, including Triad National Security, LLC (Triad) and the U.S. Department of Energy's National Nuclear Security Administration (NNSA) located within Los Alamos County and Santa Fe County, New Mexico,
2. Los Alamos County, New Mexico, located within the Los Alamos Urban Cluster as defined by the latest decennial Census,
3. New Mexico Department of Transportation (NMDOT) located within the Los Alamos Urban Cluster as defined by the latest decennial Census, and
4. NMDOT located within and interconnected with regulated LANL (Triad and NNSA) storm sewer systems in Los Alamos and Santa Fe Counties, New Mexico.

Under an NPDES permit, dischargers will be required to reduce pollutants in stormwater discharges to the Maximum Extent Practicable, effectively prohibit non-stormwater discharges into municipal separate storm sewers, and address water quality impacts as appropriate, thereby addressing concerns that these discharges are contributing to violations of NM WQS. See CWA section 402(p)(3)(B)(2)-(3) and 40 CFR § 122.34. NPDES MS4 permit(s) issued pursuant to this designation will cover only stormwater discharges from the covered MS4s. Stormwater discharges from undeveloped areas within the footprint of the designation that are not discharges from a MS4 will not be subject to permitting requirements under this designation. For example, LANL has large undeveloped areas within its property that do not appear to be served by a MS4.

II. BACKGROUND

As part of the Water Quality Act of 1987 (WQA), P.L. 100-4 (Feb. 4, 1987), Congress required EPA to establish permitting requirements for certain stormwater discharges, including discharges from large and medium MS4s. (WQA § 405, codified as CWA § 402(p), 33 U.S.C. § 1342(p)). Congress also gave EPA authority to designate additional stormwater discharges for permitting on a case-by-case basis (often referred to as EPA's residual determination authority). EPA Region 6, responding to a petition under 40 CFR § 122.26(f)(2) and (4), has determined to designate certain small MS4s in Los Alamos County pursuant to 40 CFR § 122.26(a)(9)(i)(D).

A. Current Status of Stormwater Discharges in Los Alamos County Regulated under the NPDES Stormwater Program

There are currently no regulated MS4s³ in Los Alamos County. EPA's Phase I stormwater regulations (55 FR 47990, November 16, 1990) required NPDES permits for large and medium MS4s, as defined at 40 CFR § 122.26(b)(4) and (7). The regulations included a list of incorporated places (cities) and counties that qualified as large or medium MS4s and required an NPDES permit. (40 CFR § Part 122, Appendices F through I). No areas of Los Alamos County qualified as medium or large MS4s under the Phase I regulations.

Phase I also regulated stormwater discharges associated with industrial activity. LANL has an individual stormwater permit (NM0030759) that covers certain stormwater discharges from "industrial activity" (40 CFR § 122.26(b)(14)). However, the majority of LANL activities are not regulated as "stormwater discharge associated with industrial activity," and stormwater discharges from these activities are not currently regulated under the NPDES program.

EPA's Phase II stormwater regulations (64 FR 68722, December 8, 1999) included a requirement to permit small MS4s that are either located in an "urbanized area" under the latest Decennial Census or are otherwise designated by the NPDES permitting authority (40 CFR § 122.32(a)). Los Alamos County does not include any "urbanized areas" as defined by the Census Bureau in the 2010 Decennial Census and thus small MS4s in the County have not already been designated by rule. Nor have there been any designations of small MS4 discharges in the County on a case-by-case basis before today.

B. The Petition to Designate Stormwater Discharges from Los Alamos County

The Petition alleges that the currently non-regulated stormwater discharges from Los Alamos County are contributing to violations of NM WQS and asks EPA to use its residual designation authority to determine that these stormwater discharges "require National Pollutant Discharge Elimination System (NPDES) permits pursuant to section 402(p) of the Clean Water Act and/or designation as a municipal separate storm sewer system."

In support, the Petition cites the following information:

- White Rock is located in eastern Los Alamos County, above and within approximately 0.75 miles of the Rio Grande River. Pajarito Canyon goes through White Rock on its way towards the Rio Grande. Canada del Buey goes along the northern part of White Rock.

³ "Small MS4" is defined at 40 CFR § 122.26(b)(16) as "all separate storm sewers that are:

(i) Owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.

(ii) Not defined as "large" or "medium" municipal separate storm sewer systems pursuant to paragraphs (b)(4) and (b)(7) of this section or designated under paragraph (a)(1)(v) of this section.

(iii) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings."

- LANL property contains all or parts of seven primary watersheds that drain directly into the Rio Grande. Listed from north to south, these watersheds are: Los Alamos, Sandia, Mortandad, Pajarito, Water, Ancho, and Chaquehui Canyons. The Los Alamos Townsite and the urbanized areas of LANL drain into five canyons: Los Alamos, Pueblo, Sandia, Bayo and Mortandad Canyons. White Rock drains into Rio Grande.^{4,5}
- The Petition alleges that urban stormwater pollution from Los Alamos County sites, particularly urban stormwater runoff from developed areas at LANL, the Los Alamos Urban Clusters, and the community of White Rock Canyon, is contributing to violations of NM WQS, including state WQS for PCBs, copper, zinc and nickel, and that as a result, these sites should be covered by an NPDES permit.

Although small MS4s in Los Alamos County are not automatically required to obtain NPDES permit coverage under EPA's stormwater regulations because the County does not include any "urbanized areas" as defined by the Census Bureau in the 2010 Decennial Census, Los Alamos County does have two "urban clusters" based on the results of the 2010 census.⁶ According to the 2010 Census, the county has a population of 17,950. A Census-designated urban cluster contains a population of between 2,500 and 50,000. The main population center for Los Alamos County is called the Los Alamos Townsite. The Townsite is a Census-Designated Place (CDP) and according to the 2010 Census, the population of the CDP was 12,019.⁷ According to the 2010 Census, the density of the Los Alamos Townsite CDP is 1,078.7 persons per square mile. A portion, but not all, of Los Alamos Townsite has been designated an "urban cluster" based on the results of the 2010 Census. That portion of Los Alamos Townsite designated as an "urban cluster" has a population of 10,893. The other densely inhabited place in the County is the community of White Rock, which is also a CDP. According to the 2010 Census, the population of White Rock is 5,725 and the density is 811.8 persons per square mile. A portion of the community of White Rock has also been designated as an "urban cluster," based on the results of the 2010 Census.⁸ The White Rock Urban Cluster has a population of 5,039.

C. Standards for Designation

CWA §§ 402(p)(2)(E) and 402(p)(6) provide the statutory authority for case-by-case designations of discharges composed entirely of stormwater. Under EPA's stormwater regulations promulgated pursuant to those statutory sections, small MS4s may be designated for NPDES permits pursuant to the following provisions:

- 40 CFR § 122.26(a)(9)(i)(C) -The Director determines that stormwater controls are needed for the discharge based on wasteload allocations (WLAs) that are part of "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern. Because there are no approved TMDLs with WLAs in the area, EPA is not relying on this authority.

⁴A Petition by Amigos Bravos for a Determination that Stormwater Water Discharges in Los Alamos County Contribute to Water Quality Standards Violations and Require a Clean Water Act Permit

⁵ Los Alamos National Laboratory Environmental Report 2012, 1-1 and 1-2 (2012) (LA-UR-13-27065)(2012 Environmental Report)

⁶<https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural/2010-urban-rural.html>. Accessed <11-21-2019>

⁷ <https://www.census.gov/quickfacts/losalamoscdpnewmexico>. Accessed <11-21-2019>.

⁸ <https://www.census.gov/quickfacts/whiterockcdpnewmexico> Accessed <11-21-2019>

- 40 CFR § 122.26(a)(9)(i)(D) – The Director (here the RA) determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a WQS or is a significant contributor of pollutants to waters of the United States.
- As explained above and below, EPA is relying on the first part of 40 CFR § 122.26(a)(9)(i)(D) for this designation.

III. Basis for and Scope of EPA’s Residual Designation Determination

Based on the authority of CWA § 402(p)(2)(E) and 40 C.F.R. §122.26(a)(9)(i)(D), and after review of available information, EPA has determined that stormwater discharges from MS4s located in the portion of Los Alamos County within the Los Alamos Urban Cluster and on LANL property within Los Alamos County and Santa Fe County are contributing to violations of NM WQS. As noted above, EPA examined the available data based on two factors: 1) evidence of water quality impairment; and 2) evidence that pollutant levels in the stormwater discharges are contributing to those impairments.

A. Review Criteria

1. Evidence of Water Quality Impairment

EPA first looked to see if the receiving waters for stormwater discharges from the Los Alamos Urban Cluster, the White Rock Urban Cluster, and LANL are listed as impaired on the State of New Mexico’s latest CWA section 303(d) list of impaired waters. Because a waterbody listed as impaired for a pollutant or pollutants has no remaining assimilative capacity for that pollutant(s), a discharge of stormwater containing that pollutant(s) would contribute to the impairment if the discharge contained levels of the pollutant(s) above NM’s WQS.

EPA reviewed water quality impairment information contained in the 2012-2014 State of New Mexico Clean Water Act §303(d)/305(b) Integrated Report [hereinafter "2012-2014 303(d)/305(b) Report"], with updates from the 2014-2016, 2016-2018 and 2018-2020, State of New Mexico Clean Water Act §303(d)/305(b) Integrated Reports [hereinafter 2012-2014 303(d)/305(b) Report, 2014-2016 303(d)/305(b) Report 2016-2018 303(d)/305(b) Report and 2018-2020 303(d)/305(b) Report, respectively]. After consideration of the information in the state’s Integrated Reports, as well as additional information provided by LANL and Los Alamos County, EPA finds the following:

- The 2012-2014 303(d)/305(b) Report shows Los Alamos Canyon within LANL property to be impaired for gross alpha, adjusted (a measurement of overall radioactivity and hereinafter referred to simply as "gross alpha")⁹, PCBs, aluminum, and copper.¹⁰ The 2014-2016 303(d)/305(d) Report removed copper as a cause of impairment.¹¹ Mercury was

⁹ 20.6.4.114.A NMAC defined at (5) as “Adjusted gross alpha” means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample, including radium-226, but excluding

¹⁰ State of New Mexico Water Quality Control Commission, 2012-2014 State of New Mexico Clean Water Act 303d/305b Integrated Report, Appendix A (303d/305b Report). Available at: <https://www.env.nm.gov/wp-content/uploads/sites/25/2019/10/AppendixA-USEPA-Approved303dList.pdf>

¹¹ State of New Mexico Water Quality Control Commission, 2014-2016 State of New Mexico Clean

added as a cause of impairment in the 2016-2018 303(d)/305(b) Report. In addition, as stated in the Petition, NMED data show levels of PCBs in Los Alamos Canyon downgradient from most of the urbanized areas at LANL to be over 11,000 times greater than the New Mexico Human Health water quality criteria and 51 times greater than the New Mexico Wildlife Habitat water quality criteria. The 2018-2020 303(d)/305(b) Report shows this canyon is impaired for gross alpha, PCBs, cyanide, selenium, and mercury.

- The 2012-2014 303(d)/305(b) Report shows Sandia Canyon to be impaired for PCBs, aluminum, copper, gross alpha, and mercury. In the 2014-2016 303(d)/305(b) Report and the 2016-2018 303(d)/305(b) Report,¹² thallium was added as a new cause of impairment. The 2018-2020 303(d)/305(b) Report¹³ shows this canyon is impaired with Polychlorinated Biphenyls (PCBs), aluminum, gross alpha, and mercury.
- The 2012-2014 303(d)/305(b) Report shows Mortandad Canyon to be impaired for aluminum, copper, and gross alpha. In the 2014-2016 303(d)/305(b) Report, PCBs were added as a new cause of impairment. The 2016- 2018 303(d)/305(b) Report has the same list of impairments as the 2014-2016 303d/305 Report. The 2018-2020 303(d)/305(b) Report shows this canyon is impaired with PCBs, copper, gross alpha, and mercury.
- The 2012-2014 303(d)/305(b) Report shows Pajarito Canyon to be impaired for gross alpha, aluminum, PCBs, and copper. For the 2014-2016 303(d)/305(b) Report, arsenic and selenium were added as new impairment parameters. The 2016-2018 303(d)/305(b) Report has the same list of impairments as the 2014-2016 303d/305 Report. The 2018-2020 303(d)/305(b) Report shows this canyon is impaired for gross alpha, aluminum, PCBs, mercury, and cyanide. Note that the portion of Pajarito Canyon from the Rio Grande to the LANL boundary (which goes through White Rock) is not listed as impaired by NMED.
- The 2012-2014 303(d)/305(b) Report shows Canada del Buey to be impaired for PCBs, aluminum, and gross alpha for at least the portion within LANL property. The 2014-2016 303(d)/305(b) Report removed aluminum as a cause of impairment. However, aluminum was added back to the list in the 2016-2018 303(d)/305(b) Report. Note that the section from the LANL boundary to San Ildefonso Pueblo has not been assessed. Based on the 2018-2020 303(d)/305(b) Report, this canyon is impaired for PCBs, gross alpha and, aluminum.
- The 2012-2014 303d/305b, 2014-2016 303(d)/305(b) Report, the 2016-2018 303(d)/305(b) Report and the 2018-2020 303(d)/305(b) Report show Pueblo Canyon (Acid Canyon to headwaters) to be impaired for gross alpha, PCBs, and aluminum. NMED data show levels of PCBs in Pueblo Canyon right in the middle of the Los Alamos urbanized area to be over 35,000 times greater than New Mexico's Human Health water quality criteria and 16 times greater than New Mexico's Wildlife Habitat water quality criteria.¹⁴ The Rio Grande (Cochiti Reservoir to San Ildefonso boundary)

Water Act 303d/305b Integrated Report, Appendix A (303d/305b Report). Available at: <https://www.env.nm.gov/wp-content/uploads/sites/25/2019/10/2014-2016NMList.pdf>

¹² *State of New Mexico Water Quality Control Commission, 2016-2018 State of New Mexico Clean Water Act 303d/305b Integrated Report, Appendix A (303d/305b Report). Available at:*

¹³ *State of New Mexico Water Quality Control Commission, 2018-2020 State of New Mexico Clean Water Act 303d/305b Integrated Report, Appendix A (303d/305b Report). Available at: <https://www.env.nm.gov/wp-content/uploads/sites/25/2018/03/Appendix-A-Integrated-List.pdf>*

¹⁴ *NMED, Pajarito Plateau Assessment for the 2010-2012 Integrated Report data set with PCBs and map of sampling stations <http://www.nmenv.state.nm.us/swq/b/303d-305b/20-10-20>*

is listed as impaired for PCBs, turbidity, E. coli, and gross alpha. This is the downstream segment of the Rio Grande receiving most of the flows from the canyons in Los Alamos County, but also flows from the entire watershed above the Los Alamos area draining north central New Mexico and parts of Colorado. Impairments to waterbodies directly receiving stormwater discharges from Los Alamos County before that stormwater flows to the Rio Grande River provide a strong case for concluding that those discharges are contributing to impairments in the Rio Grande.

- None of the state's Integrated Reports dating back to 2012 show the receiving streams within the White Rock Urban Cluster to be impaired.

Note: Atmospheric deposition - toxics, inappropriate waste disposal, natural sources, watershed runoff following forest fire, post-development erosion and sedimentation and source unknown were listed as probable sources of impairment in the 2012-2014 303(d)/305(b) Report. However, starting with the 2014-2016 303(d)/305(b) Report, the NMED Surface Water Quality Bureau (SWQB) changed how probable sources were treated state-wide and removed previously reported probable source lists from the 2014-2016 303(d)/305(b) Report. Instead the State began using "Source Unknown" for all impairments unless the probable source(s) have been established as part of the Total Maximum Daily Load (TMDL) process.

Based on the above findings, EPA determined that the receiving waters for at least some of the stormwater discharges from LANL and the Los Alamos Urban Cluster are listed as impaired on the NM CWA § 303(d) list. That said, EPA found that none of the immediate receiving waters for stormwater discharges from the White Rock Urban Cluster are listed as impaired on the NM CWA § 303(d) list, although there are impairments listed for the Rio Grande River, which the White Rock receiving waters ultimately reach.

2. Evidence that Pollutants of Concern in the Stormwater Discharges from Los Alamos County Are Contributing to the CWA § 303(d) Impairments

EPA next examined the available data to determine whether at least some of the stormwater discharges from Los Alamos, White Rock, and LANL have maximum or median sampling results exceeding one or more of the NM's WQS for a parameter that was listed as a cause of impairment on the state's CWA section 303(d) list. Because waterbodies listed as impaired for a pollutant or pollutants have no remaining assimilative capacity for those pollutants, maximum or median sampling results exceeding the state's WQS for one or more of those pollutants indicates that those discharges contribute to a violation of that WQS.

The Petition alleges that available data and studies link the water quality impairment downgradient from the Pajarito Plateau to stormwater runoff from urban areas in Los Alamos County. In support, the Petition states as follows:

LANL conducted two detailed studies of stormwater runoff from the Pajarito Plateau. One study was on PCB contamination and the second was on metals contamination. In these studies, LANL collected samples from non-urban, non-laboratory influenced reference sites as well as from sites representing runoff from the urbanized areas of the Los Alamos Townsite. Neither the reference nor the urban sites were influenced by point source discharges covered by LANL's individual stormwater permit. These studies show a significant contribution of both PCBs and metals from urban runoff on the Pajarito Plateau.

12/Pajarito/index.html (Pajarito Plateau Study).

The LANL PCB study found 40 of the 41 Los Alamos urban stormwater samples were above the New Mexico human health water quality criteria for PCBs and 19 of the 41 Los Alamos urban stormwater samples were above the New Mexico wildlife habitat water quality criteria for PCBs. ("PCB Report"¹⁵ at 62).

Based on review of the data from the LANL PCB report, EPA also confirmed that heightened PCB concentrations above 100 ng/L were measured in Los Alamos County urban runoff (PCB report, pp 61-64). The higher concentrations are associated with the urban stormwater from the contribution of additional diffuse local sources in the urban environment

Based on an independent review of the data included in the LANL Metals Report,¹⁶ as opposed to the conclusions reached by LANL within the report, EPA determined that storm water discharges from MS4s located in the portion of Los Alamos County within the Los Alamos Urban Cluster and on LANL property within Los Alamos County and Santa Fe County are contributing to exceedances of one or more NM WQS and therefore meet the criteria for designation.

After doing further analysis, EPA notes that the mean of the urban runoff samples exceeded at least one NM WQS for aluminum, cadmium, copper, or zinc. Also, the maximum urban runoff sample value exceeded at least one NMWQS for aluminum, cadmium, copper, and zinc. The mean of the urban runoff samples exceeded the mean of the background reference site samples for aluminum, cadmium, copper, and zinc (see appendix 4 for further analysis). The LANL studies of PCB and metal contaminated runoff tie these contaminants to the urban areas of the Pajarito Plateau. In LANL's 2013 request to EPA for alternative compliance with its NPDES discharge permit for industrial stormwater, the Laboratory argues that the cause of its exceedances of New Mexico water quality criteria for zinc and copper is urban runoff from sources such as motor oil accumulation on parking lots, brake pad and tire material released on pavement, galvanized fencing, culverts and other building materials.¹⁷

In their comments on the Petition, LANL and Los Alamos County dispute certain aspects of Petitioner's characterization of the information from the various LANL reports and the possible sources of pollutants. For instance, both LANL and Los Alamos County state that although the PCB report identifies baseline values, it does not state that urban development in Los Alamos County is contributing large amounts of PCBs to receiving waters. Further, both LANL and Los Alamos County point out, as noted by EPA in Section 11.B above, that in the 2014-2016 303(d)/305(b) Report NMED has removed the probable source lists and replaced them with "Source Unknown."

As noted above, in the 2012-2014 303(d)/305(b) Report, the State of New Mexico found that water quality in Sandia, Mortandad, Pajarito, and Pueblo Canyons is impaired by urban stormwater-related causes with impervious surfaces, parking lots, and construction and development listed as probable sources of the impairment. While the 2014-2016 Report now lists the probable sources as "unknown," this does not necessarily indicate that any particular potential source has been ruled out. According to NMED, "The approach for identifying Probable Sources of Impairment" was modified by the SWQB starting with the 2012 listing cycle. Any new impairment listings are assigned a probable source of "Source

¹⁵ *Los Alamos National Laboratory, Polychlorinated Biphenyls in Precipitation and Stormwater within the Upper Rio Grande Watershed 2 (May 2012) (LA-UR-12-1081) (PCB Report)*. Available at: <https://permalink.lanl.gov/object/tr?what=info:lanl-repo/epr/ERID-219767>

¹⁶ *Los Alamos National Laboratory, Background Metals Concentrations and Radioactivity in Stormwater on the Pajarito Plateau Northern New Mexico 2 (April 2013) (LA-UR-13-22841) (Metals Report)*. Available at: <https://permalink.lanl.gov/object/tr?what=info:lanl-repo/epr/ERID-239557>

¹⁷ *Alternative Compliance Request 2 at 31-2; Los Alamos National Laboratory, Alternative Compliance Request for S-SMA-.25 28 (April 2013) (Alternative Compliance Request .25)*

Unknown.” For the 2014 listing cycle, SWQB removed previously reported non-TMDL Probable Source listings from the Report and replaced them with “Source Unknown” for consistency. Therefore, all reported probable source listings on the state’s Integrated Lists have now been established through the TMDL process.”¹⁸As such, in making its final designation determination, EPA relied on independent analysis of stormwater quality data and receiving water impairment lists rather than on the probable source listings in the older NMED 303(d)/305(b) Reports.

Based on the Agency's independent review of all available information, EPA finds that pollutants associated with impairment are present at levels above WQS in stormwater discharges from MS4s located in the portion of Los Alamos County, New Mexico within the Los Alamos Urban Cluster as defined by the latest Decennial Census and on Los Alamos National Laboratory property located within Los Alamos County and Santa Fe County, New Mexico. As such, EPA determines that these discharges contribute to the impairments listed by the State. Again, no sampling data was available for stormwater discharges from the White Rock Urban Cluster.

A. Scope of Designation

40 CFR § 122.26(a)(9)(i)(D) allows for designation of a category of discharges within a geographic area, based upon a determination that the category "contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States."

After careful analysis of available information as discussed above, the Regional Administrator of EPA Region 6 is designating for NPDES permitting as regulated small MS4s the following:

- MS4s located in the portion of Los Alamos County, New Mexico within the Los Alamos Urban Cluster as defined by the latest Decennial Census, and
- MS4s located on Los Alamos National Laboratory property located within Los Alamos County and Santa Fe County, New Mexico.

This designation of regulated small MS4s requiring NPDES permit coverage applies to MS4s owned or operated by:

1. LANL including Triad National Security, LLC (Triad) and the U.S. Department of Energy's National Nuclear Security Administration (NNSA) located within Los Alamos County;
2. Los Alamos County located within the Los Alamos Urban Cluster as defined by the latest decennial Census;
3. New Mexico Department of Transportation (NMDOT) located within the Los Alamos Urban Cluster and as defined by the latest decennial Census; and
4. NMDOT located within and interconnected with regulated LANL (Triad and NNSA) storm sewer systems.

IV. Final Designation Decision

Based on its analysis of available information as discussed above, EPA has determined that stormwater discharges from MS4s located in the Los Alamos Urban Cluster and the LANL property are contributing to violations of NM WQS. Therefore, under the authority of CWA § 402(p)(2)(E) and 40 C.F.R. § 122.26(a)(9)(i)(D), EPA hereby designates MS4s located in the

¹⁸ 2014 – 2016 State of New Mexico Clean Water Act Section 303(d)/Section 305(b) Integrated Report FINAL November 18, 2014. Pg 56. Available at: <https://www.env.nm.gov/swqb/303d-305b/2014-2016/2014-2016NMReport.pdf>

portion of Los Alamos County, New Mexico within the Los Alamos Urban Cluster as defined by the latest Decennial Census, and MS4s located on Los Alamos National Laboratory property located within Los Alamos County and Santa Fe County, New Mexico as small MS4s requiring NPDES permit coverage.

EPA finds there is insufficient data to determine that discharges of stormwater from the White Rock Urban Cluster are contributing to a violation of NM WQS. Therefore, EPA is not designating those discharges as requiring NPDES permits.

Region 6 will be in touch with operators of the designated MS4s to set up a call to discuss permitting options under 40 CFR § 122.33.



DEC 16 2019

Dated:

Ken McQueen

Regional Administrator, Region 6

REFERENCES

1. A PETITION BY AMIGOS BRAVOS FOR A DETERMINATION THAT STORMWATER DISCHARGES IN LOS ALAMOS COUNTY CONTRIBUTE TO WATER QUALITY STANDARDS VIOLATIONS AND REQUIRE A CLEAN WATER ACT PERMIT
2. LETTER FROM NMED SECRETARY JAMES C. KENNEY TO EPA REGION 6 REGIONAL ADMINISTRATOR KEN MCQUEEN DATED OCTOBER 18, 2019
3. <https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural/2010-urban-rural.html>. Accessed <11-21-2019>.
4. <https://www.census.gov/quickfacts/losalamoscdpnewmexico>. Accessed <11-21-2019>.
5. <https://www.census.gov/quickfacts/whiterockcdpnewmexico> Accessed <11-21-2019>.
6. <http://www.census.gov/geo/reference/ua/urban-rural-2010.html>. The Census Bureau identifies two types of urban areas: 1) Urbanized Areas (UAs) of 50,000 or more people; 2) Urban Clusters (UCs) of at least 2,500 and less than 50,000 people.
7. LOS ALAMOS NATIONAL LABORATORY, *LOS ALAMOS NATIONAL LABORATORY ENVIRONMENTAL REPORT 2012*, 1-1 AND 1-2 (2012) (LA-UR-13-27065) (2012 ENVIRONMENTAL REPORT)
8. STATE OF NEW MEXICO WATER QUALITY CONTROL COMMISSION, *2018-2020 STATE OF NEW MEXICO CLEAN WATERACT 303D/305B 2014 INTEGRATED REPORT*. APPENDIX A (303(D)/305(B) REPORT)
9. STATE OF NEW MEXICO WATER QUALITY CONTROL COMMISSION, *2016-2018 STATE OF NEW MEXICO CLEAN WATERACT 303D/305B 2014 INTEGRATED REPORT*. APPENDIX A (303(D)/305(B) REPORT).
10. STATE OF NEW MEXICO WATER QUALITY CONTROL COMMISSION, *2014-2016 STATE OF NEW MEXICO CLEAN WATERACT 303D/305B 2014 INTEGRATED REPORT*. APPENDIX A (303(D)/305(B) REPORT).
11. STATE OF NEW MEXICO WATER QUALITY CONTROL COMMISSION, *2012-2014 STATE OF NEW MEXICO CLEAN WATERACT 303D/305B 2014 INTEGRATED REPORT*. APPENDIX A (303(D)/305(B) REPORT).
12. NMED, PAJARITO PLATEAU ASSESSMENT FOR THE 2010-2012 INTEGRATED REPORT DATA SET WITH PCBS AND MAP OF SAMPLING STATIONS [HTTP://WWW.NMENV.STATE.NM.US/SWQB/303D-305B/2010-2012/PAJARITO/INDEX.HTML](http://www.nmenv.state.nm.us/swqb/303D-305B/2010-2012/pajarito/index.html) (PAJARITO PLATEAU STUDY).
13. ALTERNATIVE COMPLIANCE REQUEST 2 AT 31-2; LOS ALAMOS NATIONAL LABORATORY, ALTERNATIVE COMPLIANCE REQUEST FOR S-SMA-.25 28 (APRIL 2013) (ALTERNATIVE COMPLIANCE REQUEST .25).
14. LOS ALAMOS NATIONAL LABORATORY, POLYCHLORINATED BIPHENYLS IN PRECIPITATION AND STORMWATER WITHIN THE UPPER RIO GRANDE WATERSHED 2 (MAY 2012) (LA-UR-12-1081) (PCB REPORT).

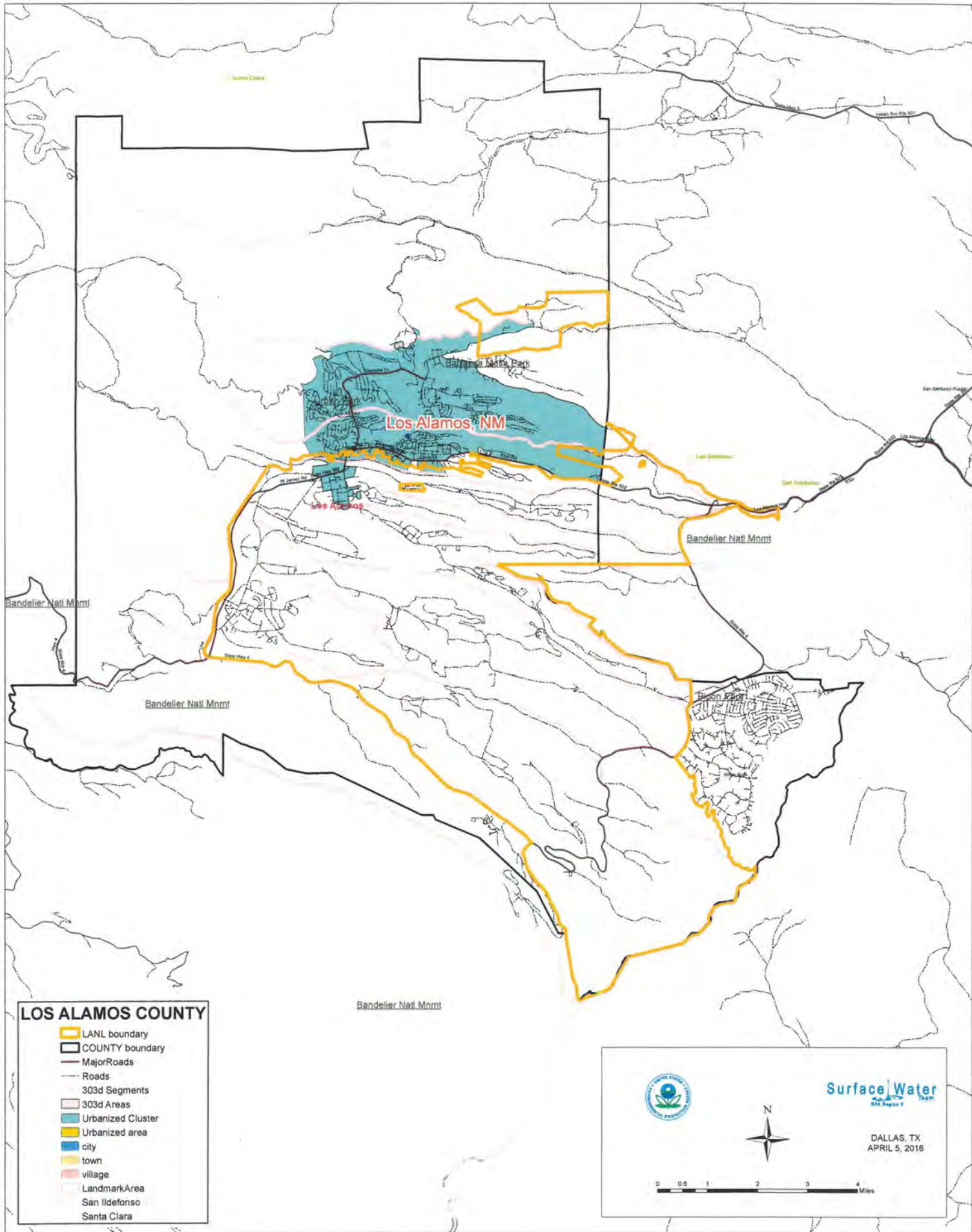
15. NEW MEXICO ENVIRONMENT DEPARTMENT, PRESS RELEASE: ENVIRONMENT DEPARTMENT ISSUES NOTICE OF VIOLATION AND PENALTY TO LOS ALAMOS COUNTY FOR ALLOWING DISCHARGE OF PCBs INTO CANYON FROM COUNTY'S ANNEX (DECEMBER 15, 2009) (PRESS RELEASE LA COUNTY VIOLATIONS).

16. LOS ALAMOS NATIONAL LABORATORY, BACKGROUND METALS CONCENTRATIONS AND RADIOACTIVITY IN STORMWATER ON THE PAJARITO PLATEAU NORTHERN NEW MEXICO 2 (APRIL 2013) (LA-UR- 13-22841) (METALS REPORT). Available at: <https://permlink.lanl.gov/object/tr?what=info:lanl-repo/epr/ERID-239557>

17. LANL LIES IN THE UPPER RIO GRANDE WATERSHED DENOTED BY U.S. GEOLOGICAL SURVEY (USGS) HYDROLOGIC UNIT CODES 13020101 AND 1301000. <http://water.usgs.gov/wsc/reg/13.html>.

18. 20.6.4.114.A NMAC.

Appendix 1: Los Alamos, LANL and NMDOT (State Hwy) Map



Appendix 2: Amigos Bravos Petition and Supporting Documents

**A Petition by Amigos Bravos
for a Determination that Storm Water Discharges
in Los Alamos County
Contribute to Water Quality Standards Violations
and Require a Clean Water Act Permit**

June 30, 2014

Ron Curry, Regional Administrator
EPA Region 6
1445 Ross Avenue, Suite 1200, Dallas, Texas 75202
gray.david@epa.gov

Dear Administrator Curry,

As the Regional Administrator of EPA Region 6, Amigos Bravos hereby petitions you for a determination, pursuant to 40 C.F.R. 122.26(a)(9)(i)(D), that non-de minimis, currently non-NPDES permitted storm water discharges in Los Alamos County are contributing to violations of water quality standards in certain impaired waters throughout the area, and therefore require a National Pollutant Discharge Elimination System (NPDES) permit pursuant to Section 402(p) of the Clean Water Act and/or designation as a municipal separate storm sewer system. *See* 33 U.S.C. §§ 1342(p)(2)(E), (p)(6); 40 C.F.R. §§ 122.26(a)(1)(v), (a)(9)(i)(D), (f)(2), (f)(4).

I. Regulatory Framework

In order to achieve the Clean Water Act's (CWA or the Act) fundamental goal of "restor[ing] and maintain[ing] the chemical, physical, and biological integrity of the Nation's waters,"³³ U.S.C. § 1251(a), EPA and states delegated authority to administer the Act must establish minimum water quality standards. 33 U.S.C. § 1313; 40 C.F.R. § 131.2. These standards define "the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria necessary to protect the uses." 40 C.F.R. § 131.2. New Mexico has established, and EPA has approved, water quality standards pursuant to this requirement.

In order to ensure that such water quality standards will be achieved, no person may discharge any pollutant into waters of the United States from a point source without a National Pollutant Discharge Elimination System (NPDES) permit. 33 U.S.C. §§ 1311(a), 1362(12)(A). NPDES permits must impose water quality-based effluent limitations, in addition to any applicable technology-based effluent limitations, when necessary to meet water quality standards. 33 U.S.C. § 1311(b).

The Act defines "point source" as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit . . . from which pollutants are or may

be discharged.” 33 U.S.C. § 1362(14). EPA’s Clean Water Act regulations further specify that “discharge of a pollutant” includes “additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man.” 40 C.F.R. § 122.2. Consequently, although storm water discharges are often characterized as “non-point” in nature, it is legally well settled that “[s]torm sewers are established point sources subject to NPDES permitting requirements.” *Environmental Defense Center v. EPA*, 344 F.3d 832, 841 (9th Cir. 2003) (citing *Natural Resources Defense Council v. Costle*, 568 F.2d 1369, 1379 (D.C. Cir. 1977)). As EPA has stated, “[f]or the purpose of [water quality] assessments, urban runoff was considered to be a diffuse source or nonpoint source pollution. From a legal standpoint, however, most urban runoff is discharged through conveyances such as separate storm sewers or other conveyances which are point sources under the CWA.” National Pollutant Discharge Elimination System Permit Application Regulations for Storm Water Discharges, 55 Fed. Reg. 47,990, 47,991 (Nov. 16, 1990).

Despite the fact that storm water runoff channeled through a conveyance is a point source subject to the Act’s permitting requirements, EPA did not actually regulate storm water through the NPDES program until Congress amended the statute in 1987 to explicitly require it, *see* 33 U.S.C. § 1342(p), and EPA promulgated its Phase I and II regulations in 1990 and 1999, respectively.¹ As a result, the Clean Water Act now requires NPDES permits for discharges of industrial and municipal storm water. 33 U.S.C. § 1342(p)(2). While these are the only categories of storm water discharges called out for regulation in the text of the statute, Congress also created a catch-all provision directing EPA to require NPDES permits for any storm water discharge that the Administrator or the State director determines “contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.” 33 U.S.C. § 1342(p)(2)(E); 40 C.F.R. § 122.26(a)(1)(v).

This catch-all authority – known as EPA’s “residual designation authority” (RDA) – is a critical tool to ensure that problematic discharges of storm water do not go unregulated. In the preamble to its Phase II Storm water regulations, EPA described the need for this authority: “EPA believes . . . that individual instances of storm water discharge might warrant special regulatory attention, but do not fall neatly into a discrete, predetermined category. Today’s rule preserves the regulatory authority to subsequently address a source (or category of sources) of storm water discharges of concern on a localized or regional basis.”²

Citizens may petition EPA for designation of storm water sources for regulation under this authority. 40 C.F.R. § 122.26(f)(2) and (f)(4). In recent years, often acting in response to such petitions, EPA and delegated states have exercised this residual designation authority on multiple

¹ National Pollutant Discharge Elimination System Permit Application Regulations for Storm Water Discharges, 55 Fed. Reg. 47,990 (Nov. 16, 1990); National Pollutant Discharge Elimination System—Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges, 64 Fed. Reg. 68,722 (Dec. 8, 1999).

² National Pollutant Discharge Elimination System—Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges, 64 Fed. Reg. at 68,781.

³ U.S. EPA Region IX, Request for Designation of MS4 Discharges on the Island of Guam for NPDES Permit Application Regulations for Storm Water Discharges, 64 Fed. Reg. at 68,781.

occasions.³

Once EPA has made a finding or determination that a category of discharges meets the statutory criterion of “contribut[ing] to a violation of a water quality standard,” it must designate that category for regulation, and those “operators shall be required to obtain a NPDES permit.” 40 C.F.R. § 122.26(a)(9)(i)(D). In other words, “the Agency’s residual designation authority is not optional.” *In re Storm water NPDES Petition*, 910 A.2d 824, 835-36 (Vt. 2006). As EPA has explained, “designation is appropriate as soon as the adverse impacts from storm water are recognized.” Letter from G. Tracy Mehan III, EPA Assistant Administrator, to Elizabeth McLain, Secretary, Vermont Agency of Natural Resources 2 (Sept. 16, 2003).⁴

EPA has not defined a threshold level of contribution to water quality standards violations that would suffice to make such a determination. However, the agency has advised delegated states that “it would be reasonable to require permits for discharges that contribute more than *de minimis* amounts of pollutants identified as the cause of impairment to a water body.” *Id.*

In New Mexico, EPA Region VI is the permitting agency. Thus, the Region would make a determination under 40 C.F.R. § 122.26(a)(9) whether a storm water discharge is contributing to a water quality standards violation or is a significant contributor of pollutants. Once you receive an RDA petition requesting that EPA exercise this authority, the Agency must make a final decision on the petition within 90 days. 40 C.F.R. § 122.26(f)(5).

In responding to similar petitions filed last year, EPA Regions I, III and IX have indicated that they considered five factors. We do not concede that these five factors are consistent with the relevant provisions of the Clean Water Act or EPA’s implementing regulations; however, they provide a useful framework for this analysis. The factors are:

1. Likelihood of exposure of pollutants to precipitation at sites in the categories identified in the petition;
2. Sufficiency of available data to evaluate the contribution of stormwater discharges to water quality impairment from the targeted categories of sites;
 - a. Data with respect to determining causes of impairment in receiving water quality;
 - b. Data available from establishment of Total Maximum Daily Loads;

³ U.S. EPA Region IX, Request for Designation of MS4 Discharges on the Island of Guam for NPDES Permit Coverage (Feb. 2011), available at <http://www.epa.gov/region9/water/npdes/pdf/guam/Guam-ms4-residual-designation-memo.pdf>; Vermont Agency of Natural Resources, Department of Environmental Conservation, Final Designation Pursuant to the Clean Water Act for Designated Discharges to Bartlett, Centennial, Englesby, Morehouse and Potash Brooks (Nov. 2009), available at http://www.vtwaterquality.org/stormwater/docs/swimpairedwatersheds/sw_rda_permit_FINAL.pdf; U.S. EPA Region I, Final Determination Under Section 402(p) of the Clean Water Act—Long Creek (Oct. 2009), available at <http://www.epa.gov/region1/npdes/stormwater/assets/pdfs/LongCreekFinalResidualDesignation.pdf>; U.S. EPA Region I, Residual Designation Pursuant to Clean Water Act—Charles River (Nov. 2008), available at <http://www.epa.gov/region1/charles/pdfs/RODfinalNov12.pdf>.

⁴ All documents cited in this Petition and the attached Statement of Facts are provided in the Appendix, which is submitted as part of the Petition.

3. Whether other federal, state, or local programs adequately address the known stormwater discharge contribution to a violation of a water quality standard.⁵

Additional factors can be found in Addendum D to a Region VI document titled “FACT SHEET, August 29, 2003, Proposed Issuance of National Pollutant Discharge Elimination System (NPDES) Storm Water General Permit for Small Municipal Separate Storm Sewer Systems (MS4s)” [hereinafter “Region VI Fact Sheet”]. The Region VI Fact Sheet details the results of an effort by EPA to determine the need for MS4 coverage within the region. The factors listed in Addendum D were used to decide which MS4s would be included in the general permit. The factors are:

- 1) Does the MS4 discharge storm water to sensitive waters?

“Sensitive waters” generally include public drinking water intakes and their designated protection areas; swimming beaches and waters in which swimming occurs; shellfish beds; state-designated Outstanding Resource Waters; National Marine Sanctuaries; waters within Federal, State and local parks; and waters containing threatened or endangered species and their habitat. Discharges of storm water to sole-source aquifers will be considered by EPA Region 6 on a case-by-case basis.

- 2) Is the MS4 a significant contributor of pollutants to waters of the United States?

A municipal storm water discharge that has been identified as a “contributing source of pollutants” to a Clean Water Act section 303(d)-listed waterway will be considered a significant contributor of pollutants for purposes of designation decisions. A storm water discharger that is required to reduce loading through an EPA-approved Total Maximum Daily Load (TMDL) analysis shall also be considered a significant contributor of pollutants to waters of the United States.

- 3) Is the MS4 densely populated?

Population density is related to the level of human activity, and has been shown to be directly linked to total impervious land surfaces; impervious surfaces are directly related to pollutant loadings from storm water runoff. EPA is also taking into consideration whether or not the MS4 serves a larger seasonal or commuter population.

- 4) Has the MS4 experienced high population growth over the last 10 years?

⁵ Enclosure to Letter from H. Curtis Spalding, Regional Administrator, EPA Region I, to Jeffrey Odefey, Christopher Kilian, and Jon Devine 4 (March 11, 2014); Enclosure to Letter from Shawn M. Garvin, Regional Administrator, EPA Region III, to Jeffrey Odefey, Director of Storm water Programs, American Rivers 6 (March 12, 2014); Enclosure to Letter from Jared Blumenfeld, Regional Administrator, EPA Region IX, to Jeffrey Odefey, Director of Storm water Programs, American Rivers 5 (March 12, 2014) [hereinafter “March 2014 Letters”].

High population growth or growth potential means the local residential population has grown by 10% or more, based upon the latest Census Bureau information. A discussion on selection of 10% as a high growth rate outside urbanized areas was included in the proposed Phase II regulations published January 9, 1998 (63 FR 1561).

5) Is the MS4 contiguously located to an Urbanized Area?

Jurisdictions that are directly adjacent to a U.S. Census Bureau-defined Urbanized Area will be considered to have potential impacts on a neighboring regulated municipality.

6) Is the MS4 physically interconnected to another MS4?

As required by 40 CFR 123.35 (b)(4), an MS4 located outside a UA that contributes substantially to the pollutant loadings of a physically interconnected MS4 already regulated under Phase II must be included in the program. To be "physically interconnected," the MS4, including roads with drainage systems and municipal streets, is physically connected directly to a municipal separate storm sewer of another entity.

7) Is the storm water runoff from this MS4 effectively addressed by other water quality programs?

EPA will consider, on a case-by-case basis, whether the storm water runoff from a potentially designated MS4 is effectively addressed under other regulations or programs, such as the Coastal Zone Act Reauthorization Amendments, the National Estuary Program under Clean Water Act section 320, and/or other non-point source programs. Information in support of this criterion should be provided directly to EPA Region 6 by the candidate MS4.

Region VI Fact Sheet at 51-3 (Addendum D). In the Fact Sheet EPA describes the analytical process it used: "water quality considerations and overall impacts of storm water discharges will be given more 'weight' than population characteristics in this decision-making process." *Id.* at 53.

II. Factual Background

A statement that summarizes the undisputed facts and some relevant documents is attached as Exhibit A, and is incorporated herein by reference. A summary of this statement is set forth below:

A. LAY OF THE LAND

Los Alamos County is located in north-central New Mexico, approximately 60 miles north northeast of Albuquerque and 25 miles northwest of Santa Fe. Statement of Facts in Support of Amigos Bravos' Petition at 1 (Paragraph 1) (Attached as "Exhibit A") [hereinafter "Statement of

Facts”]. The main population center is called the Los Alamos Townsite. *Id.* (Paragraph 2). The other densely inhabited place in the County is the community of White Rock Canyon. *Id.* Los Alamos County is also home to the 36 square mile Los Alamos National Laboratory (LANL or the Laboratory). *Id.* (Paragraph 4).

The Los Alamos Townsite and the urbanized areas of LANL sit on the Pajarito Plateau. *Id.* (Paragraph 5). The Pajarito Plateau consists of a series of finger-like mesas separated by deep east-to-west-oriented canyons cut by streams. *Id.* (Paragraph 6). Most Laboratory and community developments are confined to the mesa tops. *Id.* Urban landscapes at the Townsite and at LANL include parking lots, roads, and structures. *Id.* (Paragraph 7).

LANL property contains all or parts of seven primary watersheds that drain directly into the Rio Grande. *Id.* at 2 (Paragraph 11). Listed from north to south, these watersheds are: Los Alamos, Sandia, Mortandad, Pajarito, Water, Ancho, and Chaquehui Canyons. The Los Alamos Townsite and the urbanized areas of LANL drain into five canyons: Los Alamos, Pueblo, Sandia, Bayo and Mortandad Canyons. *Id.*

B. WATER IMPAIRMENT

The Statement of Facts provides a detailed discussion of urban-related surface water pollution downgradient from LANL and the Los Alamos Townsite.

1. **Several Canyons are Impacted by Runoff Pollution**

Los Alamos Canyon within LANL property is impaired for gross alpha (a measurement of overall radioactivity), PCBs, aluminum, copper, mercury, and zinc. *Id.* (Paragraph 16). New Mexico Environment Department (NMED) data show levels of PCBs in Los Alamos Canyon downgradient from most of the urbanized areas at LANL to be over 11,000 times greater than the New Mexico Human Health water quality criteria and 51 times greater than the New Mexico Wildlife Habitat water quality criteria. *Id.* at 3 (Paragraph 18).

Sandia Canyon is impaired for PCBs, aluminum, copper, gross alpha, and mercury. *Id.* (Paragraph 19). Post-development erosion and sedimentation are listed as sources of impairment in the 2012-2014 State of New Mexico Clean Water Act 303b/305b 2014 Integrated Report [hereinafter “303b/305b Report”]. Statement of Facts at 3 (Paragraph 19). NMED data show levels of PCBs in Sandia Canyon below much of the urbanized areas at LANL to be over 14,000 times greater than the New Mexico Human Health water quality criteria and 66 times greater than the New Mexico Wildlife Habitat water quality criteria. *Id.* (Paragraph 20). In a 2013 request to EPA for alternative compliance with its Clean Water Act discharge permit, LANL explains that copper, zinc, and PCB storm water pollution above New Mexico water quality standards was from urban storm water sources. *Id.* at 7 (Paragraph 56).

Mortandad Canyon is impaired for aluminum, copper and gross alpha. *Id.* at 2 (Paragraph 15). Impervious surface/parking lot runoff, post-development erosion and sedimentation, and watershed runoff following forest fire are listed as sources of impairment in the 303b/305b Report. *Id.*

Pajarito Canyon is impaired for gross alpha, aluminum, PCBs, and copper. *Id.* at 3 (Paragraph 21). Post-development erosion and watershed runoff following forest fire are listed as sources of impairment in the 303b/305b Report. *Id.*

Pueblo Canyon is impaired for gross alpha, PCBs, aluminum, copper, and zinc. *Id.* at 2 (Paragraph 13). Industrial/commercial site storm water discharge, post-development erosion and sedimentation are listed as sources of impairment by the NMED in the 303b/305b Report. *Id.* NMED data show levels of PCBs in Pueblo Canyon right in the middle of the Los Alamos urbanized areas to be over 3,500 times greater than the New Mexico Human Health water quality criteria and 16 times greater than the New Mexico Wildlife Habitat water quality criteria. *Id.* (Paragraph 14).

2. Urban Runoff is the Cause

The data and studies summarized in the Statement of Facts firmly link the water quality impairment downgradient from the Pajarito Plateau to storm water runoff from urban areas.

LANL conducted two detailed studies of storm water runoff from the Pajarito Plateau. One study focused on PCB contamination and the second focused on metals contamination. In these studies LANL collected samples from non-urban, non-laboratory influenced reference sites as well as from sites representing runoff from the urbanized areas of the Los Alamos Townsite. Neither the reference nor the urban sites were influenced by point source discharges from LANL's individual storm water permit. These studies show a significant contribution of both PCBs and metals from urban runoff on the Pajarito Plateau.

The LANL PCB study found 40 of the 41 Los Alamos urban storm water samples were above the New Mexico human health water quality criteria for PCBs and 19 of the 41 Los Alamos urban storm water samples were above the New Mexico wildlife habitat water quality criteria for PCBs. *Id.* at 4 (Paragraphs 33-34). The LANL report concluded that suspended PCBs carried by urban runoff from the Los Alamos Townsite were 10 to 200 times more enriched with PCBs than at non-urban influenced Pajarito Plateau sites. *Id.* at 5 (Paragraph 36).

In 2007 the NMED collected storm water samples from urban sites containing PCBs as high as 255 times the state's PCB human health water quality criteria. *Id.* at 8 (Paragraph 64). NMED sampling data in 2006 and 2007 show levels of PCBs in storm water draining off of urban areas in Los Alamos Townsite to be more than 34,000 times greater than the NM Human Health water quality criteria. *Id.* (Paragraph 65).

A Laboratory study of metals contamination in storm water runoff from urban areas at LANL and the Los Alamos Townsite found exceedances of New Mexico water quality criteria for cadmium, copper, and zinc. *Id.* at 6 (Paragraphs 43-50). In addition, the LANL metals report demonstrated that values for copper, zinc and nickel in urban storm water runoff in Los Alamos County substantially exceeded non-urban influenced Pajarito Plateau storm water concentrations. *Id.* at 6-7 (Paragraphs 49-51).

As noted above, in its 303b/305b Report the State of New Mexico found that water quality in Sandia, Mortandad, Pajarito, and Pueblo Canyons is impaired because of urban-related causes such as impervious surfaces, parking lots, construction and development. *Id.* at 2-3 (Paragraphs 13, 15, 19, 21). NMED data also shows substantial water quality impairment in Los Alamos Canyon downgradient from most of the urbanized areas at LANL. *Id.* at 8 (Paragraph 64).

The LANL studies of PCB and metal contaminated runoff tie these contaminants to the urban areas of the Pajarito Plateau. In LANL's 2013 request to EPA for alternative compliance with its Clean Water Act discharge permit, the Laboratory argues that the cause of its exceedances of New Mexico water quality criteria for zinc and copper is urban runoff from sources such as motor oil accumulation on parking lots, brake pad and tire material released on pavement, galvanized fencing, culverts and other building materials. *Id.* at 5 (Paragraphs 38-41).

III. Analysis

Los Alamos County and LANL have a storm water pollution problem. The NMED's 2006 and 2007 data shows dramatic exceedances of the state's PCB human health water quality criteria. The state's 303b/305b Report documents many more exceedances of standards – for a variety of pollutants and locations – and identifies storm water runoff as a major cause. LANL's own documents confirm these findings and identify urban runoff as the culprit.

A. EVALUATION FACTORS FROM MARCH 2014 LETTERS

The evaluation factors from the March 2104 Letters confirm that this Petition should be granted.

Factor one is the “[l]ikelihood of exposure of pollutants to precipitation at sites in the categories identified in the petition.” The 303b/305b Report and the LANL reports show that exceedances of state water quality criteria are associated with storm water; in other words, precipitation comes in contact with sites within Los Alamos County containing pollutants that end up in the storm water flow.

The Petition also meets the second factor, “sufficiency of available data to evaluate the contribution of stormwater discharges to water quality impairment from the targeted categories of sites.” The first sub-factor is the sufficiency of “[d]ata with respect to determining causes of impairment in receiving water quality.” The 2006/2007 NMED data, the 303b/305b Report, the LANL PCB and metals reports and the LANL requests for alternative compliance all provide data and/or analysis that support the Petition. The second sub-factor, the sufficiency of “[d]ata available from establishment of Total Maximum Daily Loads,” is not relevant here as there are no TMDLs for the water-bodies at issue.

Finally, the third factor, “[w]hether other federal, state, or local programs adequately address the known stormwater discharge contribution to a violation of a water quality standard,” is also met. As noted above, there is no TMDL that addresses this storm water-borne pollution. Further, the individual permits for LANL and Los Alamos County do not cover storm water discharges from the urbanized features that generate the pollution. The LANL requests for

alternative compliance repeatedly state that there is no mechanism under the Laboratory's individual storm water permit to control the water quality exceedances found in their sampling because the pollution is caused by runoff from urban features.

EPA's Multi Sector General Permit (MSGP) provides no protection from the sources of pollution involved here. The MSGP applies to operators of storm water discharges associated with thirty different industrial activities, such as scrap recycling facilities, auto salvage yards, and steam electric generating facilities. However, the MSGP does not cover general urban storm water discharges such as the discharges from parking lots and roads that are causing the toxic runoff in Los Alamos County.

B. FACTORS FROM REGION VI FACT SHEET

Application of the factors in the Region VI Fact Sheet also supports this petition.

Factor one is, “[d]oes the MS4 discharge storm water to sensitive waters?” Sub-factors identified by EPA include public drinking water intakes, swimming areas, federal and state parks and threatened or endangered species. Factor one is met for a variety of reasons.

Regarding intake for public drinking water systems, both Santa Fe's and Albuquerque's public water intakes are potentially affected. The runoff from Los Alamos is enough of a public health concern to the downstream City of Santa Fe that it shuts down its surface water diversion on the Rio Grande (the receiving water for runoff from Los Alamos County) used to supply drinking water when storm water flows from Los Alamos are predicted. Statement of Facts at 8-9 (Paragraph 66). Farther downstream, the City of Albuquerque draws fifty percent or more of its drinking water from a surface diversion on the Rio Grande. *Id.* at 9 (Paragraph 67). Consistent with this, the designated uses to be supported by New Mexico Water Quality Standards for the Rio Grande from the Cochiti Pueblo boundary to north of where runoff from Los Alamos' canyons enters the river include “primary contact” (that is, ingestion) and “public water supply.” *Id.* (Paragraph 68).

Regarding the sub-factor for swimming areas, the Rio Grande feeds Cochiti Lake, which is a very popular swimming location in the summer for residents of Albuquerque and others. *Id.* (Paragraph 69).

Regarding the sub-factor for federal and state parks, the Rio Grande is adjacent to Bandelier National Monument and makes up more than four miles of its eastern boundary. *Id.* (Paragraph 70).

Finally, although they are not threatened or endangered, the Rio Grande provides habitat for re-introduced river otters, which have been observed below the point where the Los Alamos canyons intersect the river. *Id.* (Paragraph 71).

Factor two is, “[i]s the MS4 a significant contributor of pollutants to waters of the United States?” The Region VI Fact Sheet, in explaining this factor notes, “[a] municipal storm water discharge that has been identified as a ‘contributing source of pollutants’ to a Clean Water Act

section 303(d)-listed waterway will be considered a significant contributor of pollutants for purposes of designation decisions.” Region VI Fact Sheet at 52. The 303b/305b Report identifies storm water discharges from Los Alamos County as causes for the impairment to several water courses discharging into the Rio Grande. Further, the LANL PCB and metals reports as well as its request for alternative compliance confirm that exceedances of water quality standards are caused by storm water discharges from Los Alamos County.

Factor three, “[i]s the MS4 densely populated?” is met because Los Alamos has been designated as an “urban cluster,” based on the results of the 2010 census. 77 Fed. Reg. 18,651, 18,662 (Mar. 27, 2012). In addition Los Alamos Townsite meets the small MS4 definition as detailed in 40 CFR 122.32 in that it has a population greater than 10,000 and a population density of greater than 1,000 per square mile. Statement of Facts at 1 (Paragraph 2). Adding to the density in Los Alamos County is its growing commuter population. As of the year 2000 the commuter population in the county was 8,673 and had grown steadily from 1980 through 2000. *Id.* (Paragraph 3). By 2010 the commuter population had grown to 9,072. *Id.*

Factor three, “[h]as the MS4 experienced high population growth over the last 10?” is not met based on permanent population but the commuter population has grown steadily, as noted above.

Factors five and six – whether contiguous to an urbanized area, and whether physically interconnected to another MS4 -- are not met. However, as the Region VI Fact Sheet explains at page 53: “water quality considerations and overall impacts of storm water discharges will be given more ‘weight’ than population characteristics in this decision-making process.”

Factor seven, “**Is the storm water runoff from this MS4 effectively addressed by other water quality programs?**” is the same as the third factor from the March 2014 Letters. This factor is met as noted above.

C. THE PETITION SHOULD BE GRANTED

Petitioner Amigos Bravos, and others, have repeatedly requested LANL and Los Alamos County to address this pollution and also requested that EPA Region VI mandate such efforts. MS4 coverage is required to address this pollution.

Based on the well-documented water quality impairment caused by urban runoff from Los Alamos County sites, Amigos Bravos requests that EPA require an individual NPDES permit (or permits)⁶ for these discharges into municipal separate storm sewer systems. In the alternative, Amigos Bravos requests that EPA designate the systems through which these discharges travel

⁶ Because of its existing monitoring infrastructure and baseline studies as well as the unique concerns associated with storm water flows mobilizing historic contamination from the Lab, Amigos Bravos believes LANL should have an individual MS4 permit with appropriate treatment and monitoring requirements. See Letter from Rachel Conn to William Honker (June 30, 2014) (copy provided in the Appendix). However, whatever form the permit takes -- whether general or individual -- EPA has a responsibility to protect water quality by subjecting urban stormwater from the Los Alamos to Clean Water Act regulation.

as a municipal separate storm sewer system under the Act and add it to the general permit.

For all the foregoing reasons, the Petition has merit and should be granted.

Sincerely,

/s/ Rachel Conn

Rachel Conn
Projects Director
Amigos Bravos

Cc: William K. Honker
Claudia V. Hosch
Brent Larsen
Nancy K. Stoner
Michael H. Shapiro
Sarah Holcomb, NMED

Statement of Facts in Support of Amigos Bravos' Petition¹

1. Los Alamos County is located in north-central New Mexico, approximately 60 miles north northeast of Albuquerque and 25 miles northwest of Santa Fe.²
2. According to the 2010 Census, the county has a population of 17,950. The main population center is called the Los Alamos Townsite. The Townsite is a Census Designated Place (CDP) and according to the 2010 Census the population of the CDP was 12,019. According to the 2010 Census, the density of the Los Alamos Townsite CDP is 1,078.7 persons per square mile. The other densely inhabited place in the County is the community of White Rock Canyon, which is also a CDP. According to the 2010 Census the population of White Rock Canyon is 5,725 and the density is 811.8 persons per square mile. 2010 Census, <http://quickfacts.census.gov/qfd/states/35/3542320.html>
3. The number of commuters who work in Los Alamos County but live elsewhere has increased from 1980 to 2000.³ In 1980 the number of commuters was 4,263, which increased to 6,485 in 1990. The year 2000 figure is 8,673. In 2010 the number of commuters had increased to 9,072.⁴
4. Los Alamos County is home to the 36 square mile Los Alamos National Laboratory (LANL), which was founded to undertake the Manhattan Project.⁵
5. The Los Alamos Townsite and the urbanized areas of LANL sit on the Pajarito Plateau.
6. The Pajarito Plateau consists of a series of finger-like mesas separated by deep east-to-west-oriented canyons cut by streams. The mesa tops range in elevation from approximately 7,800 feet on the flanks of the Jemez Mountains to about 6,200 feet at the edge of White Rock Canyon. Most Laboratory and community developments are confined to the mesa tops. 2012 Environmental Report at 1-2.
7. Urban landscapes at the Townsite and at LANL include parking lots, roads, and structures ranging in age from the 1940s to 2012. These features release a variety of soluble and insoluble constituents to storm water, including metals and organic

¹ All the documents reference herein are included in the Appendix, which accompanies the Petition.

² Los Alamos National Laboratory, *Polychlorinated Biphenyls in Precipitation and Stormwater within the Upper Rio Grande Watershed 2* (May 2012) (LA-UR-12-1081) (PCB Report).

³ Los Alamos County Community Development Department, *Los Alamos County Affordable Housing Plan 38* (Jan. 14, 2010) (Table 14),

www.losalamosnm.us/cdd/Documents/Affordable%20Housing/LAAffordableHousingPlan2010.pdf

⁴ U.S. Census Bureau, *Table 2. Residence County to Workplace County Flows for the United States and Puerto Rico Sorted by Workplace Geography: 2006-2010*

<http://www.census.gov/population/metro/data/other.html> (sum of column E values for rows 73589-621; omitting row 73604).

⁵ Los Alamos National Laboratory, *Los Alamos National Laboratory Environmental Report 2012*, 1-1 and 1-2 (2012) (LA-UR-13-27065) (2012 Environmental Report).

compounds.⁶

8. LANL lies in the upper Rio Grande watershed denoted by U.S. Geological Survey (USGS) hydrologic unit codes 13020101 and 1301000.
<http://water.usgs.gov/wsc/reg/13.html>.
9. LANL has approximately 2,800 structures with approximately 8.6 million square feet of roof space. 2012 Environmental Report at 1-7.
10. The Laboratory has a footprint of developed area that is consistent with urban development. Metals Report at 5.
11. LANL property contains all or parts of seven primary watersheds that drain directly into the Rio Grande. Listed from north to south, these watersheds are Los Alamos (includes Pueblo, DP and Bayo Canyons), Sandia, Mortandad, Pajarito, Water, Ancho, and Chaquehui Canyons. 2012 Environmental Report at 6-2. A map of these watersheds can be found at in the 2012 Environmental Report at page 6-3.
12. The Los Alamos Townsite and the urbanized areas of LANL drain into 7 canyons – Los Alamos Canyon, DP Canyon, Pueblo Canyon, Sandia Canyon, Pajarito Canyon, Bayo Canyon and Mortandad Canyon. 2012 Environmental Report at 6-3.
13. Pueblo Canyon is impaired for Gross Alpha, PCBs, Aluminum, Copper, and Zinc. Industrial/commercial site storm water discharge, post-development erosion and sedimentation are listed as sources of impairment.⁷
14. New Mexico Environment Department (NMED) data presented in NMED's Pajarito Plateau Assessment show levels of PCBs in Pueblo Canyon right in the middle of the urbanized areas at LANL and at Los Alamos Townsite (sampling station EO55) to be over 3,500 times greater than the New Mexico Human Health WQC and 16 times greater than the New Mexico Wildlife Habitat WQC.⁸
15. Mortandad Canyon is impaired for Aluminum, Copper and Gross Alpha. Impervious surface/parking lot runoff, post-development erosion and sedimentation, and watershed runoff following forest fire are listed as sources of impairment. 303b/305b 2014 Report, Appendix A at 238.
16. Los Alamos Canyon within LANL property is impaired for Gross Alpha, PCBs, Aluminum, Copper, Mercury, and Zinc. *Id.* at 125 and 127.

⁶ Los Alamos National Laboratory, *Background Metals Concentrations and Radioactivity in Storm Water on the Pajarito Plateau Northern New Mexico 2* (April 2013) (LA-UR-13-22841) (Metals Report).

⁷ State of New Mexico Water Quality Control Commission, *2012-2014 State of New Mexico Clean Water Act 303b/305b 2014 Integrated Report* Appendix A, 137 to 139 (303b/305b Report).

⁸ NMED, *Pajarito Plateau Assessment for the 2010-2012 Integrated Report* data set with PCBs and map of sampling stations <http://www.nmenv.state.nm.us/swqb/303d-305b/2010-2012/Pajarito/index.html> (Pajarito Plateau Study).

17. Los Alamos Canyon from the Los Alamos Reservoir to headwaters, located above urbanized areas fully supports all assessed designated uses. *Id.* at 126.
18. NMED data presented in NMED's Pajarito Plateau Assessment show levels of PCBs in Los Alamos Canyon, which is located below most of the urbanized areas at LANL (sampling station E030), to be over 11,000 times greater than the New Mexico Human Health WQC and 51 times greater than the New Mexico Wildlife Habitat WQC. See Pajarito Plateau Study (data set with PCBs and map of sampling stations).
19. Sandia Canyon is impaired for PCBs, Aluminum, Copper, Gross Alpha, and Mercury. Post-development erosion and sedimentation are listed as sources of impairment. 303b/305b 2014 Report, Appendix A at 250-51.
20. NMED data presented in NMED's Pajarito Plateau Assessment show levels of PCBs in Sandia Canyon, which is located below most of the urbanized areas at LANL (sampling station E123), to be over 14,000 times greater than the New Mexico Human Health WQC and 66 times greater than the New Mexico Wildlife Habitat WQC. See Pajarito Plateau Study (data set with PCBs and map of sampling stations).
21. Pajarito Canyon is impaired for Gross Alpha, Aluminum, PCBs, and Copper. Post-development erosion and watershed runoff following forest fire are listed as sources of impairment. 303b/305b 2014 Report, Appendix A at 240-43.
22. LANL has coverage under an individual storm water permit NM0030759 (LANL IP), issued by the Environmental Protection Agency. This permit covers 405 contaminated sites, which are called either Solid Waste Management Units (SWMUs) or Areas of Concern (AOCs). These sites are monitored at 250 Site Monitoring Areas (SMAs). NM0030759 only regulates these sites. NM0030759 does not regulate general urbanized runoff at LANL or from the Los Alamos Townsite. See NPDES permit # NM0030759 (LANL IP).
23. The target action levels (TALs) developed in the LANL IP are based on and equivalent to New Mexico State water quality criteria. LANL IP at 3 (Part I).
24. In 2012, copper concentrations in filtered storm water were detected above the New Mexico chronic aquatic life water quality criteria (WQC) for copper in Sandia Canyon (4 of 5 samples). In 2012, copper concentrations in filtered storm water were detected above the NMWQCC acute aquatic life WQC for copper in Acid Canyon, DP Canyon, and at the upper Los Alamos sediment detention basins (5 of 39 samples). All of these locations receive a large percentage of runoff from developed areas. 2012 Environmental Report at 6-25.
25. In 2012 sampling of storm water occurred in watersheds along the western boundary of LANL and in urban, developed landscapes in the Los Alamos townsite and on LANL property. The results were included in a report evaluating background and

baseline concentrations of particular metals, weak acid, dissociable cyanide, gross-alpha radioactivity, and radium isotopes. Metals Report at 1.

26. LANL acknowledges that elevated zinc concentrations in storm water are associated with developed areas. 2012 Environmental Report at 6-26.
27. Only 1 of the 34 precipitation and snowpack samples (that is, background samples) collected by LANL for their PCB report were above the New Mexico human health WQC of 0.64 ng/L, and none were above the wildlife habitat WQC of 14 ng/L. PCB Report at 18.
28. Otowi Bridge on the Rio Grande is located above the runoff from the majority of urban influenced canyon systems from Los Alamos County and LANL (Los Alamos Canyon, Pueblo Canyon, Sandia Canyon, Mortandad Canyon, Bayo Canyon and Mortandad Canyon). See maps found at 2012 Environmental Report at 6-3 and PCB Report at 10.
29. The Buckman Well Field on the Rio Grande is located below the runoff from the majority of Los Alamos County and LANL urban influenced canyon systems. See maps found at 2012 Environmental Report at 6-3 and PCB Report at 10.
30. When collecting data for the PCB report, storm water samplers were placed in ephemeral channels around the edge of urban development in Los Alamos County and LANL. No urban samplers were located below any know areas of concentrated contamination (point sources). PCB Report at 59.
31. No known natural sources of PCBs exist. Because of their non-flammability, chemical stability, high boiling point, and electrical insulating properties, PCBs were historically used in hundreds of industrial and commercial applications. These applications included electrical, heat-transfer, and hydraulic equipment; plasticizers in paints, plastics, calking, and rubber products; pigments, dyes, and carbonless copy paper; and many other uses. More than 1.5 billion pounds of PCBs were manufactured in the U.S. until domestic manufacture of commercial mixtures, known as Aroclors, ceased in 1977. Approximately 450 million pounds of PCBs have been released to the environment (ATSDR 2000, 213440). *Id.*
32. 41 Los Alamos urban influenced storm water samples were collected and analyzed for PCBs. *Id.* at 62.
33. 40 of the 41 (98%) Los Alamos urban storm water samples were above the New Mexico human health WQC for PCBs. *Id.*
34. 19 of the 41 (46%) Los Alamos urban storm water samples were above the New Mexico wildlife habitat WQC for PCBs. *Id.*
35. In the LANL PCB Report upper tolerance limits (UTLs) were calculated in ProUCL for the best fit distribution to calculate the upper limit concentrations for PCBs under

baseline conditions. (ProUCL is EPA-developed statistical software; http://www.epa.gov/osp/hstl/tsc/ProUCL_v5.0_fact.pdf.) The upper tolerance limit (UTL) for PCBs at Los Alamos urban influenced storm water sites (98 ng/L) was substantially higher than the PCB UTL at Los Alamos area non-urban influenced storm water sites (13 ng/L). PCB Report at 49, 64.

36. Suspended PCBs carried by urban runoff from the Los Alamos townsite were 10 to 200 times more enriched with PCBs than at non-urban influenced Pajarito Plateau sites. *Id.* at 62.
37. The LANL PCB Report shows that urban development in Los Alamos County is contributing large amounts of PCBs to receiving waters. The PCB Report calculated the baseline value for total PCBs in storm water runoff from the Los Alamos Townsite to be 98 ng/L, which is substantially greater than the baseline value of 11.7 ng/L that was measured for reference non-urban influenced runoff in Los Alamos County. *Id.* at 49, 64.
38. The higher concentrations associated with the Los Alamos urban runoff as opposed to the Pajarito Plateau reference sites “likely results from the contribution of additional diffuse local [Los Alamos] sources in the urban environment.” This is consistent with information from the Agency for Toxic Substances and Disease Registry as well numerous studies that report PCB concentrations in storm water in urban areas are higher than in rural locations. Los Alamos National Laboratory, *Alternative Compliance Request for S-SMA-2 23* (April 2013) (Alternative Compliance Request 2).
39. Studies have shown that motor oil accumulation on parking lots that then is discharged during storm events is a large contributor of zinc in storm water. *Id.* at 15.
40. Tire material consists of 1% zinc by weight, which is released with tire wear as particulate dust or as deposits onto pavement. This release of zinc from tire wear has been found to be a source in storm water runoff (Golding 2006). *Id.*
41. Vehicle brake emissions are one of the most important sources of copper in the urban environment (Sondhi 2010). Copper and other metal additives have been used in brake pads since the 1960s. Between 1998 and 2002, the use of copper in domestic brake pads increased by 90% to meet new federal safety regulations. The content of copper in brake pads varies from 15%–25% at present and accounted for an estimated 47% of copper in a Maryland urban residential neighborhood. Brake emissions in California were estimated to contribute 80% of the copper found in urban storm water runoff. *Alternative Compliance Request 2* at 15.
42. LANL repeatedly says in their Alternative Compliance Requests that there is no mechanism under the Individual Stormwater Permit to control the water quality

exceedances found in their sampling because the pollutants come from urban sources, not the Lab.⁹

43. In 2009 LANL prepared a report to measure background levels of metals and radioactivity in storm waters of the Pajarito Plateau unaffected by Laboratory point source activities and baseline levels of metals and radioactivity in urban (runoff from buildings, roads, parking lots, and associated infrastructure) storm water in the Los Alamos area. Metals Report at 1.
44. Sample locations in the Metals Report were chosen to represent urban environments on the Pajarito Plateau (Los Alamos Townsite and LANL). *Id.* at 5.
45. Nineteen samples for the Metals Report were collected from reference areas (not influenced by urban runoff) and analyzed for 26 constituents (metals and radionuclides). These samples were used to determine baseline values for these constituents. *Id.* at 19, 28.
46. Storm water samples from urban areas at LANL and Los Alamos Townsite were collected from 2008-2012 and used to develop the Metals Report. *Id.* at 33.
47. The maximum value for dissolved cadmium in urban runoff samples from LANL and Los Alamos Townsite was 0.894 ug/L. *Id.* at 33. The TAL and NM WQC for dissolved cadmium is 0.6 ug/L. LANL IP at 4 (Part I).
48. LANL sampling found concentrations of dissolved copper in Los Alamos urban storm water discharges at values well above the NM WQC. The maximum value for dissolved copper in urban runoff samples from LANL and Los Alamos Townsite was 31.8ug/L and the mean value was 10.17 ug/L. Metals Report at 34. The TAL and NM WQC for dissolved copper is 4.3 ug/L. LANL IP at 4 (Part I).
49. The Metals Report shows that urban development in Los Alamos County is contributing large amounts of copper to receiving waters. The Metals Report calculated the baseline value for dissolved copper in storm water runoff in Los Alamos County to be 32.3 ug/L, which is substantially greater than the baseline value of 3.43 ug/L that was measured for reference non-urban influenced runoff in Los Alamos County. Metals Report at 17, 37.
50. The Metals Report shows that urban development in Los Alamos County is contributing large amounts of zinc to receiving waters. The Metals Report calculated the baseline value for dissolved zinc in storm water runoff in Los Alamos County to be 1,120 ug/L, which is substantially greater than the baseline value of 109 ug/L that was measured for reference non-urban influenced runoff in Los Alamos County. *Id.*

⁹ Alternative Compliance Request 2 at 31-2; Los Alamos National Laboratory, *Alternative Compliance Request for S-SMA-.25* 28 (April 2013) (Alternative Compliance Request .25).

51. The Metals Report shows that urban development in Los Alamos County is contributing large amounts of nickel to receiving waters. The Metals Report calculated the baseline value for dissolved nickel in storm water runoff in Los Alamos County to be 7.57 ug/L, which is substantially greater than the baseline value of 3.53 ug/L that was measured for reference non-urban influenced runoff in Los Alamos County. *Id.*
52. LANL sampling found concentrations of dissolved zinc in Los Alamos urban storm water discharges at values well above the NM WQC. The maximum value for dissolved zinc in urban runoff samples from LANL and Los Alamos Townsite was 882 ug/L and the mean value was 181 ug/L. *Id.* at 34. The TAL and NM WQC for dissolved copper is 42 ug/L. LANL IP 4 (Part I).
53. LANL, in their 2013 Alternative Compliance request to EPA, reports that there is copper storm water pollution above NM WQC from urban development in Sandia Canyon. Alternative Compliance Request .25 at 15.
54. LANL, in their 2013 Alternative Compliance request to EPA, reports that data strongly indicate that zinc pollution in storm water in Sandia Canyon is associated with urban runoff. *Id.* at 16.
55. LANL reports in their 2013 Alternative Compliance request to EPA that the primary source of PCB exceedances of permit TALs (and therefore NM WQC) at site monitoring area S-SMA-.25 is from urban runoff. *Id.* at 22.
56. In their 2013 Alternative Compliance Request to EPA, LANL claims that installing controls at the storm water point sources in S-SMA-.25, a drainage area in the Sandia Canyon Watershed, would not lead to attainment of TALs (the same as NM WQC) because the primary source of exceedances are from storm water runoff from urban and natural background sources. *Id.* at 26, 28. LANL goes on to identify urban storm water runoff as the main source of TAL and NM WQC exceedances for zinc, copper and PCBs. *Id.* at 28.
57. LANL identifies urban runoff from sources such as brake pad wear on parking lots, galvanized fencing, culverts and other building materials as the sources of zinc and copper exceedances of TALs (same as NM WQC). *Id.* at 31.
58. Site-specific storm water run-on samples collected by LANL in Sandia Canyon demonstrate urban storm water runoff contributes to TAL (same as NM WQC) exceedances of PCBs. *Id.*
59. In another drainage area in Sandia Canyon (S-SMA-2.0), LANL identifies anthropogenic urban sources as one of the sources of TAL (and NM WQC) exceedances for PCBs. Alternative Compliance Request 2 at 14.
60. LANL identifies runoff from urban development as the likely source of TAL (and NM WQC) exceedances for copper. At one specific site in Sandia Canyon, which is

the focus of one of their alternative compliance request, copper exceedances from urban runoff ranged from 4.78 ug/L to 21.3 ug/L. The TAL (same as NM WQC) for copper is 4.3 ug/L. *Id.* at 16.

61. LANL identifies runoff from urban development as the likely source of TAL (and NM WQC) exceedances for zinc. At one specific site in Sandia Canyon (S-SMA-2.0), which is the focus of one of their alternative compliance requests, zinc exceedances from urban runoff ranged from 30.9 ug/L to 61.2 ug/L. The TAL (same as NM WQC) for zinc is 42 ug/L. *Id.* at 21.
62. LANL states in their Alternative Compliance Request 2.0 that controls in place under the LANL IP and controls proposed to be installed under the LANL IP would not affect the urban source of PCBs in storm water found at S-SMA-2.0, a drainage area in Sandia Canyon. *Id.* at 27.
63. In 2009 the New Mexico Environment Department (NMED) issued a Notice of Violation (NOV) and proposed penalty of \$13,200 to Los Alamos County for violating state surface water quality standards by discharging contaminated storm water.¹⁰
64. NMED collected storm water samples on 8/3/07 that showed a geometric mean of 0.16316 ug/ of PCBs. They collected another set of samples on 9/5/07 that revealed a geometric mean of 0.00360 ug/L of PCBs. These samples were approximately 255 times and six times the state's PCB human health WQC. The 8/3/07 sample was 12 times the PCB wildlife habitat WQC. Press Release LA County Violations.
65. NMED sampling data in 2007 and 2006 show levels of PCBs in storm water draining off of urban areas in Los Alamos Townsite to be more than 34,000 times greater than the NM Human Health WQC. The concentration of PCBs at Los Alamos County Yard (site 1; 28CtyYdSite1) on 8/2/06 was 22.2 ug/L, which is over 34,000 times greater than the Human Health WQC. A sample taken on 7/26/07 from Timber Ridge (Timber Ridge drainage; 28TimBRg000.2) showed a PCB concentration of 0.133 ug/L, which is 207 times greater than the Human Health WQC. Timber Ridge is a development of apartment buildings in Los Alamos Townsite that drains into Los Alamos Canyon.¹¹
66. The City of Santa Fe diverts water from the Rio Grande at its surface water diversion, the Buckman Direct Diversion Project. This surface water is critical to Santa Fe's effort to meet its current and future water needs. City of Santa Fe, *How the BDD Works*, <http://bddproject.org/about-the-bdd/how-the-bdd-works/>. Santa Fe shuts down its diversion whenever the City's monitors in Los Alamos and Pueblo Canyons

¹⁰ New Mexico Environment Department, *Press Release: Environment Department Issues Notice of Violation and Penalty to Los Alamos County for Allowing Discharge of PCBs into Canyon from County's Annex* (December 15, 2009) (Press Release LA County Violations).

¹¹ This NMED sampling data was obtained via an Inspection of Public Records Act request. The data is included in the Appendix.

detect storm water flows. City of Santa Fe, *Buckman Direct Diversion Project Water Quality FAQs*, <http://bddproject.org/water-quality/water-quality-faqs/>.

67. The City of Albuquerque also diverts surface water from the Rio Grande and uses it for drinking water. Albuquerque Bernalillo County Water Utility Authority, *San Juan Chama Project*, http://www.abcwua.org/San_Juan_Chama_Project.aspx. The City relies upon this diversion project, referred to as the San Juan-Chama Drinking Water Project, for the majority of the City's drinking water and projects a substantial need for this surface water far into the future.¹²
68. The designated uses to be supported by New Mexico Water Quality Standards for the Rio Grande from the Cochiti Pueblo boundary to north of where runoff from Los Alamos' canyons enters the river include "primary contact" (that is, ingestion) and "public water supply." 20.6.4.114.A NMAC.
69. Below where the Los Alamos canyons feed into it, the Rio Grande flows into Cochiti Lake, "[o]ne of the Albuquerque metro-area's most popular swimming spots," with "more than 600 people on the beach every day of a holiday weekend," according to the Army Corps of Engineers. <http://krqe.com/2014/05/22/cochiti-lake-swim-beach-closed-for-memorial-day/>
70. The Rio Grande is adjacent to Bandelier National Monument and makes up more than four miles of its eastern boundary.
https://www.lib.utexas.edu/maps/national_parks/bandelier_park97.pdf
71. The Rio Grande supports a population of re-introduced river otters. Beginning in 2008, 33 river otters have been released to the Rio Grande; since then otters have been spotted in the Rio Grande and its tributaries below where the Los Alamos canyons feed into the Rio Grande.¹³

¹² Albuquerque Bernalillo County Water Utility Authority, *Water Resources Management Strategy Implementation 2024 Water Conservation Plan Goal and Program Update 2* (July 2013), http://www.abcwua.org/uploads/files/2024_Water_Conservation_Plan_Update.pdf (Figure 1).

¹³ James N. Stuart, *River Otter Reintroduction Update* (Feb, 23, 2012) (presentation by NMG&F to N.M. Game Commission).



Friends of the Wild Rivers

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Via USPS and email (Honker.William@epa.gov)

June 30, 2014

William K. Honker, Division Director
Water Quality Protection Division
U.S. EPA, Region VI
Fountain Place, 12th Floor, Suite 1200
1445 Ross Avenue
Dallas, TX 75202-2733

Dear Mr. Honker,

Under separate cover, Amigos Bravos is petitioning the Regional Administrator for a determination that storm water discharges in Los Alamos County are contributing to violations of water quality standards and, therefore, require NPDES permits pursuant to Section 402(p) of the Clean Water Act and/or designation as a municipal separate storm sewer system. Our petition is supported by extensive data and analysis from the New Mexico Environment Department and the Los Alamos National Laboratory. We firmly believe this petition has merit and should be granted.

If the petition is granted, your division will have the task of implementing the decision. In this letter I would like to share with you our vision of how MS4 coverage for Los Alamos could be accomplished. Urban storm water pollution from Los Alamos should be covered by an individual permit.

Both the nature of the pollution and the current monitoring infrastructure that is unique to this area support the case for coverage under an individual permit. The urban storm water runoff from developed areas at LANL and the Los Alamos Townsite are additionally harmful because of LANL's history of releases. Many of the canyons on the Pajarito Plateau have old dump sites called solid waste management units (SWMUS), which continue to release pollution. Annual reports for LANL's individual industrial storm water permit (IP) detail the scope of continuing storm water exceedances from these SWMUS. Specifically, of the 246 sites for which samples were collected, 233 of them had releases that exceeded water quality standards.¹ Some of these

¹ Los Alamos National Laboratory, *Storm Water Individual Permit Annual Report, Reporting Period: January 1–December 31, 2013, NPDES Permit No 0030759 154* (March

exceedances continue to be over 32,000 times greater than water quality standards.² The urban storm water that is discharged into these canyons exacerbates and mobilizes this historic toxic pollution. The unique contamination issues associated with Los Alamos merit the individual treatment and monitoring opportunities available under an individual permit.

Another reason why an individual permit is appropriate in this case is LANL, as demonstrated by its detailed background study reports on PCBs and Metals, as well as by its extensive monitoring under the IP, has the needed monitoring infrastructure already in place as well as an extensive baseline to compare monitoring results collected under an individual MS4 permit.

An individual permit could provide for needed monitoring and specific treatment options that are not available under the general small MS4 permit. Appropriate treatment options for Los Alamos could be similar to those proposed for the individual MS4 permit for Charles County, Maryland under which treatment of twenty percent of the County's impervious surface would be required by the end of the 5-year permit term.³

We look forward to having a constructive dialogue with you and your staff on this topic.

Sincerely,

Rachel Conn
Projects Director
Amigos Bravos

Cc: Claudia Hosch
Brent Larsen

2014) (table 8.2), <http://permalink.lanl.gov/object/tr?what=info:lanl-repo/epr/ERID-254067>.

² Los Alamos National Laboratory, *Renewal Application for NPDES Permit Number NM0030759, Individual Permit for Storm Water Discharges from Solid Waste Management Units and Areas of Concern, Volume 1 of 2* 133 (March 2014) (Table 10), <http://permalink.lanl.gov/object/tr?what=info:lanl-repo/epr/ERID-254864>.

³ *Maryland Department of the Environment Draft National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System Permit 8* (June 18, 2014) (Draft permit for Charles County, Maryland. Permit No MD0068365, <http://www.mde.state.md.us/programs/Water/StormwaterManagementProgram/Documents/Charles%20Permit%20tentative%20determination.pdf>).



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PERMITS BRANCH

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*Date: November 20, 2014
Symbol: ENV-DO-14-0354
LA-UR: 14-28913, 14-28375
Locates Action No.: N/A*

Mr. Brent Larsen
Chief, NPDES Permits and Technical Assistance Section (6WQ-PP)
U. S. Environmental Protection Agency (EPA), Region 6
1445 Ross Avenue
Dallas, Texas, 75202-2733

Dear Mr. Larsen:

Subject: Supplemental Information Regarding the Petition by Amigos Bravos for a Determination that Storm Water Discharges in Los Alamos County Contribute to Water Quality Standards Violations and Require a Clean Water Act Permit

Thank you for the opportunity to provide information regarding Los Alamos National Laboratory (LANL or the Laboratory) and the Amigos Bravos Petition for a Determination that Storm Water Discharges in Los Alamos County Contribute to Water Quality Standards Violations and Require a Clean Water Act Permit (the "Petition"). The Department of Energy and Los Alamos National Security, LLC ("DOE/LANS") appreciate and share Amigos Bravos' commitment to water quality in New Mexico. DOE/LANS want to ensure EPA has sufficient and accurate information upon which to base its decision on the Petition.

DOE/LANS have prepared the attached comments on the Statement of Facts submitted by Amigos Bravos in support of its Petition (Enclosure 1). DOE/LANS is also providing a description of its existing storm water programs, the areas of the Laboratory that might be considered urban in nature (Enclosure 2), and of their view regarding the factors used to determine whether a small MS4 permit is appropriate.

I. Storm Water Programs

DOE/LANS implement multiple storm water programs focused primarily on applicable NPDES permits. DOE/LANS operate under the Multi-Sector General Permit ("MSGP"), the Construction General Permit ("CGP"), and an Individual Permit (IP) which regulates storm water discharges from 405 solid waste



management units (“SWMUs”) or areas of concern (“AOCs”). LANS storm water personnel maintain required documentation and perform routine inspections at all regulated sites and facilities pursuant to these permits, and maintain an extensive system of sampling stations and storm water control structures. In addition, LANS staff participate in and conduct on-site/off-site seminars, informational meetings, facility tours, and training sessions regarding discharges of storm water and regulatory requirements.

The MSGP at LANL regulates storm water discharges from metal fabrication, power generation, asphalt production (this facility is subject to effluent limits), recycling operations, transportation facilities, a nonferrous foundry and hazardous waste management units. DOE/LANS manage approximately 30 facilities that are regulated under the MSGP. These facilities are routinely inspected and their storm water discharges are monitored for benchmark parameters and water quality standards. In accordance with the 2008 MSGP and through successful implementation of MSGP requirements during the last five years, multiple benchmark parameter and impaired water constituents have been eliminated from further monitoring because analytical data indicate that concentrations of benchmark parameters are below target levels identified in the MSGP.

The CGP program applies to clearing, grading, excavating, and stockpiling performed in connection with construction activity that disturbs one or more acres or less than one acre of land that is part of a common plan of development that will ultimately disturb one or more acres of land. Since February 2012 when the current CGP was issued, DOE/LANS have submitted 25 NOIs to EPA, prepared over 65 storm water pollution prevention plans (“SWPPPs”), and have completed over 1900 site inspections. Each regulated site has a SWPPP and best management practices are employed.

The IP directs DOE/LANS to monitor storm water discharges from SWMUs and AOCs at specified sampling points. The sites regulated under the IP are a subset of the SWMUs and AOCs that are being addressed under the Resource Conservation and Recovery Act 2005 Compliance Order on Consent (“Consent Order”) issued by the New Mexico Environment Department. The majority of the sites covered by the IP are remotely located and are not near current industrial activities. Finally, the IP requires, among other things, installation of control measures, monitoring, and corrective action for exceedences of target action levels. Under the IP, numerous storm water controls have been engineered and constructed.

DOE/LANS storm water programs demonstrate commitment to protecting surface waters at the Laboratory. Significant work has been completed and additional work is underway to reduce discharges of storm water at the Laboratory. For example, the completion of the Sandia Wetland Stabilization Project will reduce the potential for migration of contaminated sediments and provide the necessary controls for attainment of the dissolved copper standard in the Upper Sandia Assessment Unit. This assessment unit receives water from the most densely populated area at the Laboratory (Technical Area 3, discussed below). Detention ponds, low-head weirs, stabilization of disturbed areas, and numerous other storm water controls are installed and maintained yearly.

II. Urban Areas or Urban Clusters

The Laboratory footprint is approximately 36 square miles of mostly undeveloped land. The two areas that could potentially be characterized as urban clusters or developed in nature and that are also served by municipal storm sewer infrastructure are the Technical Area ("TA") 3 area¹ and the western one-third of the Pajarito Corridor. These areas are shown in Enclosure 2.

The TA-3 area is the location of, among other things, administrative buildings, numerous laboratory facilities, craft shops, several parking lots, a cafeteria, a New Mexico Park & Ride transfer station and two multi-story parking structures. Approximately 2900 employees work in facilities located within TA-3.

The western one-third of the Pajarito Corridor includes TAs 48, 55, 50, 63, 66, 35 and 52 (these TAs are listed roughly as one would encounter them if traveling eastbound on Pajarito Road with the exception of TAs 35 and 52, which are accessed via TA-55). These TAs include within their boundaries the plutonium facility, radiological and chemical laboratories, administrative and office buildings, craft shops, the Radioactive Liquid Waste Treatment Facility, and multiple parking lots. Approximately 2300 employees work in these areas. A map outlining the geographic boundaries of TA-3 and the western one-third of the Pajarito Corridor is attached.

The remainder of the Laboratory consists of dispersed facilities, open space in which firing sites are located and undeveloped, unoccupied land. Many of these facilities and sites are regulated under the MSGP, the IP or the 2005 Consent Order. The majority of construction projects at the Laboratory are regulated under the CGP. Additionally, the Energy Independence and Security Act requires federal development or redevelopment projects with a footprint that exceeds 5,000 square feet to maintain or restore to the maximum extent technically feasible the predevelopment hydrology of the property. MS4 regulation of undeveloped areas or sites outside of the TA-3 area and the western one-third of the Pajarito corridor, and areas or sites already regulated by the IP, Consent Order, or both, is not necessary or appropriate.

III. Factors Addressed in the Petition

The Petition lists two sets of factors used to determine whether a small MS4 permit should be required. The first set is derived from EPA response letters denying similar petitions in EPA Regions I, III and IX. The second is from a 2003 fact sheet published by Region VI when it proposed its small MS4 general permit. In addition to these factors, EPA's Office of Water also lists five factors in a fact sheet published in 2012 (EPA 833-F-00-003). In the main, the factors are similar and focus on current and forecasted populations, discharges to sensitive waters, discharges of pollutants and the adequacy of existing programs (discussed above).

With respect to populations, the number of residents of Los Alamos County is stable or decreasing. Employment levels at the Laboratory have similarly remained stable or decreased. These numbers are expected to remain the same if not decrease further.

¹ For ease of description, the adjacent and developed area of TA-60 is grouped with TA-3.

With respect to sensitive waters and discharges, five canyons are identified by Amigos Bravos as impaired from, at least in part, discharges from the Laboratory or Los Alamos County: Los Alamos, Sandia, Mortandad, Pajarito and Pueblo. Amigos Bravos listed the probable causes and sources of impairment based on the 2012-2014 303d/305b Integrated Report ("IR"); however, the 2014-2016 IR makes significant changes to those causes and sources. Copper, zinc and mercury were removed as probable constituents in several canyons and the probable source lists were removed and replaced with "Source Unknown". Probable sources are to be developed by the New Mexico Environment Department in the TMDL planning process. Details regarding each canyon's probable cause and source of impairment are provided in the attached comments on Amigos Bravos' Statement of Facts. Generally, the most recent IR listings tend to show a reduction in the constituents causing impairments and uncertainty regarding sources.

Finally, DOE/LANS are unaware of data reflecting Laboratory impacts on any drinking water system. The Los Alamos County 2013 Water Quality Report, summarizes the most recent monitoring results required by EPA's Safe Drinking Water Act program. The water in Los Alamos County meets all federal and state drinking water quality standards. Additionally, the City of Santa Fe in cooperation with LANS/DOE and NMED monitor Buckman Wells 1, 6 and 8 for LANL-derived contaminants on a quarterly basis. Samples are analyzed for radionuclides, general inorganic chemicals, metals, high explosives and organics. Data collected from 2001-2013 indicate no LANL-derived constituents are present in these wells.

IV. Conclusion

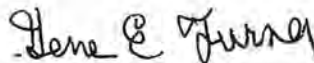
DOE/LANS appreciate the opportunity to provide this information and looks forward to participating fully in the decision making process on the Amigos Bravos Petition.

Sincerely,



Alison M. Dorries
Division Leader
Environmental Protection Division
Los Alamos National Security LLC

Sincerely,



Gene E. Turner
Environmental Permitting Manager
Environmental Projects Office
Los Alamos Field Office
U.S. Department of Energy

AMD:GET:TWL/kt

Enclosures: (1) Response to the Statement of Facts
(2) LANL NPDES MS4 Boundary Proposal

Cy: Bryan Aragon, Los Alamos County, (E-File)
Gene E. Turner, NA-LA, (E-File)
Kirsten Laskey, NA-LA, (E-File)
Lisa Cummings, NA-LA, (E-File)
Carl A. Beard, PADOPS, (E-File)

Mr. Brent Larsen
ENV-DO-14-0354

- 5 -

Cy (continued):

Michael T. Brandt, ADESH, (E-File)

Raeanna Sharp-Geiger, ADESH, (E-File)

Alison M. Dorries, ENV-DO, (E-File)

Michael T. Saladen, ENV-CP, (E-File)

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ENCLOSURE 1

Response to the Statement of Facts

ENV-DO-14-0354

LA-UR-14-28913

Date: NOV 20 2014

- *In summary, stormwater discharge from LANL is episodic, and does not pose a health risk, and contaminated groundwater at LANL does not impact the water quality at the BDD intake.*
- *There is no significant health risk for BDD water system consumers.*
- *Chemical and radionuclide levels in the Rio Grande are within acceptable drinking water criterias and/or are naturally occurring.*
- *There is very little if any contribution from LANL to the Rio Grande during normal baseflow conditions.*
- *Stormwater discharge from LANL does not pose a health risk.*
- *There are no contributions from LANL groundwater to the Buckman well field.*

67. The City of Albuquerque also diverts surface water from the Rio Grande and uses it for drinking water. Albuquerque Bernalillo County Water Utility Authority, *San Juan Chama Project*, http://www.abcwua.org/San_Juan_Chama_Project.aspx. The City relies upon this diversion project, referred to as the San Juan-Chama Drinking Water Project, for the majority of the City's drinking water and projects a substantial need for this surface water far into the future.¹²

The City of Albuquerque and the Albuquerque Bernalillo Water Utility Authority have consistently used San Juan-Chama water captured in the Rio Grande with the water delivered to their customers meeting all Safe Drinking Water Quality requirements.

63. In 2009 the New Mexico Environment Department (NMED) issued a Notice of Violation (NOV) and proposed penalty of \$13,200 to Los Alamos County for violating state surface water quality standards by discharging contaminated storm water.

The County has since mitigated this site and no penalty charges were paid. In 2012, the County constructed a retention pond to prevent the release of storm water from the site. Since then, a private developer has improved the site and provided water quality measures while maintaining a retention pond to prevent the release of storm water runoff from the site.

64. NMED collected storm water samples on 8/3/07 that showed a geometric mean of 0.16316 ug/ of PCBs. They collected another set of samples on 9/5/07 that revealed a geometric mean of 0.00360 ug/L of PCBs. These samples were approximately 255 times and six times the state's PCB human health WQC. The 8/3/07 sample was 12 times the PCB wildlife habitat WQC. Press Release LA County Violations.

As stated above, this site has been mitigated by building a retention pond to prevent the release of storm water runoff from the site.

65. NMED sampling data in 2007 and 2006 show levels of PCBs in storm water draining off of urban areas in Los Alamos Townsite to be more than 34,000 times greater than the NM Human Health WQC. The concentration of PCBs at Los Alamos County Yard (site 1; 28CtyYdSite1) on 8/2/06 was 22.2 ug/L, which is over 34,000 times greater than the Human Health WQC. A sample taken on 7/26/07 from Timber Ridge (Timber Ridge drainage; 28TimbRg000.2) showed a PCB concentration of 0.133 ug/L, which is 207 times greater than the Human Health WQC. Timber Ridge is a development of apartment buildings in Los Alamos Townsite that drains into Los Alamos Canyon.11

As stated above, this site has been mitigated by building a retention pond to prevent the release of storm water runoff from the site.

66. The City of Santa Fe diverts water from the Rio Grande at its surface water diversion, the Buckman Direct Diversion Project. This surface water is critical to Santa Fe's effort to meet its current and future water needs. City of Santa Fe, *How the BDD Works*, <http://bddproject.org/about-the-bdd/how-the-bdd-works/>. Santa Fe shuts down its diversion whenever the City's monitors in Los Alamos and Pueblo Canyons detect storm water flows. City of Santa Fe, *Buckman Direct Diversion Project Water Quality FAQs*, <http://bddproject.org/water-quality/water-quality-faqs/>.

It is acknowledged that the City of Santa Fe diverts water from the Rio Grande, however the overall conclusion from the Buckman Direct Diversion Project, Independent Peer Review, Final Report from December 3, 2010 states the following:

58. Site-specific storm water run-on samples collected by LANL in Sandia Canyon demonstrate urban storm water runoff contributes to TAL (same as NM WQC) exceedances of PCBs. *Id.*

Per Page 3 of Part I.C. of the LANL IP, Applicable Target Action Levels are not themselves effluent limitations, but are benchmarks to determine the effectiveness of control measures implemented to meet the non-numeric technology based effluent limitations. The LANL documents cited in the petition report exceedances of TALs and do not reference NM WQC.

59. In another drainage area in Sandia Canyon (S-SMA-2.0), LANL identifies anthropogenic urban sources as one of the sources of TAL (and NM WQC) exceedances for PCBs. Alternative Compliance Request 2 at 14.

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Per Page 3 of Part I.C. of the LANL IP, Applicable Target Action Levels are not themselves effluent limitations, but are benchmarks to determine the effectiveness of control measures implemented the non-numeric technology based effluent limitations. The LANL documents cited in the petition report exceedances of TALs and do not reference NM WQC.

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53. LANL, in their 2013 Alternative Compliance request to EPA, reports that there is copper storm water pollution above NM WQC from urban development in Sandia Canyon. Alternative Compliance Request .25 at 15.

The referenced LANL Alternative Compliance Request reports that copper values exceed TALs. It does not state values exceed NM WQC.

55. LANL reports in their 2013 Alternative Compliance request to EPA that the primary source of PCB exceedances of permit TALs (and therefore NM WQC) at site monitoring area S-SMA-.25 is from urban runoff. *Id.* at 22.

Per Page 3 of Part I.C. of the LANL IP, Applicable Target Action Levels are not themselves effluent limitations, but are benchmarks to determine the effectiveness of control measures implemented to meet the non-numeric technology based effluent limitations. The LANL documents cited in the petition report exceedances of TALs and do not reference NM WQC.

56. In their 2013 Alternative Compliance Request to EPA, LANL claims that installing controls at the storm water point sources in S-SMA-.25, a drainage area in the Sandia Canyon Watershed, would not lead to attainment of TALs (the same as NM WQC) because the primary source of exceedances are from storm water runoff from urban and natural background sources. *Id.* at 26, 28. LANL goes on to identify urban storm water runoff as the main source of TAL and NM WQC exceedances for zinc, copper and PCBs. *Id.* at 28.

Per Page 3 of Part I.C. of the LANL IP, Applicable Target Action Levels are not themselves effluent limitations, but are benchmarks to determine the effectiveness of control measures implemented to meet the non-numeric technology based effluent limitations. The LANL documents cited in the petition report exceedances of TALs and do not reference NM WQC.

57. LANL identifies urban runoff from sources such as brake pad wear on parking lots, galvanized fencing, culverts and other building materials as the sources of zinc and copper exceedances of TALs (same as NM WQC). *Id.* at 31.

Per Page 3 of Part I.C. of the LANL IP, Applicable Target Action Levels are not themselves effluent limitations, but are benchmarks to determine the effectiveness of control measures implemented to meet the non-numeric technology based effluent limitations. The LANL documents cited in the petition report exceedances of TALs and do not reference NM WQC.

Response to the Statement of Facts

The Amigos Bravos Petition for a Determination that Storm Water Discharges in Los Alamos County Contribute to Water Quality Standards Violations and Require a Clean Water Act Permit included a "Statement of Facts". Below are responses to the sequentially numbered statements, where clarification or additional information is applicable. The provided information is a cooperative effort between DOE/LANS and Los Alamos County.

2. According to the 2010 Census, the county has a population of 17,950. The main population center is called the Los Alamos Townsite. The Townsite is a Census Designated Place (CDP) and according to the 2010 Census the population of the CDP was 12,019. According to the 2010 Census, the density of the Los Alamos Townsite CDP is 1,078.7 persons per square mile. The other densely inhabited place in the County is the community of White Rock Canyon, which is also a CDP. According to the 2010 Census the population of White Rock Canyon is 5,725 and the density is 811.8 persons per square mile. 2010 Census, <http://quickfacts.census.gov/qfd/states/35/3542320.html>

The 1990 population for Los Alamos County was 18,115, the 2000 population was 18,343, the 2010 population was 17,950 and the 2013 estimated population for Los Alamos County is 17,798. This shows that there has been very little growth to the County over the last twenty years. The persons per square mile in 2010 was 164 for the overall County.

6. The Pajarito Plateau consists of a series of finger-like mesas separated by deep east-to-west-oriented canyons cut by streams. The mesa tops range in elevation from approximately 7,800 feet on the flanks of the Jemez Mountains to about 6,200 feet at the edge of White Rock Canyon. Most Laboratory and community developments are confined to the mesa tops.

The majority of both the Laboratory and Los Alamos Townsite are confined to the mesa tops.

13. Pueblo Canyon is impaired for Gross Alpha, PCBs, Aluminum, Copper, and Zinc. Industrial/commercial site storm water discharge, post-development erosion and sedimentation are listed as sources of impairment.

In the 2014-2016 listing cycle, the SWQB removed previously-reported probable source lists from the Integrated Report (2014 - 2016 State of New Mexico Clean Water Act (CWA) Sections 303(d)/305(b) Integrated List of Assessed Surface Waters). These were replaced with "Source Unknown". Probable sources will be developed in TMDL planning process.

The report was adopted by the WQCC on September 9, 2014 and forwarded to EPA Region VI for approval.

Copper is not listed as a cause of impairment for the main stem of Pueblo Canyon from the headwaters to Los Alamos Canyon.

14. New Mexico Environment Department (NMED) data presented in NMED's Pajarito Plateau Assessment show levels of PCBs in Pueblo Canyon right in the middle of the urbanized areas at LANL and at Los Alamos Townsite (sampling station EO55) to be over 3,500 times greater than the New Mexico Human Health WQC and 16 times greater than the New Mexico Wildlife Habitat WQC.

The NMED Pajarito Plateau Assessment identifies a sample that was taken within Pueblo Canyon at the levels indicated, but this sample was not taken at sampling station EO55. Also, none of the urbanized areas at LANL discharge to Pueblo Canyon.

15. Mortandad Canyon is impaired for Aluminum, Copper and Gross Alpha. Impervious surface/parking lot runoff, post-development erosion and sedimentation, and watershed runoff following forest fire are listed as sources of impairment. 303b/305b 2014 Report, Appendix A at 238.

In the 2014-2016 listing cycle, the SWQB removed previously-reported probable source lists from the Integrated Report (2014 - 2016 State of New Mexico Clean Water Act (CWA) Sections 303(d)/305(b) Integrated List of Assessed Surface Waters). These were replaced with "Source Unknown". Probable sources will be developed in TMDL planning process.

16. Los Alamos Canyon within LANL property is impaired for Gross Alpha, PCBs, Aluminum, Copper, Mercury, and Zinc. *Id.* at 125 and 127.

Copper and zinc are not listed as a cause of impairment for the main stem of Los Alamos Canyon located within LANL property. In the 2014-2016 listing cycle, mercury was removed as a cause of impairment in the assessment unit below DP Canyon to the LANL boundary.

19. Sandia Canyon is impaired for PCBs, Aluminum, Copper, Gross Alpha, and Mercury. Post-development erosion and sedimentation are listed as sources of impairment. 303b/305b 2014 Report, Appendix A at 250-51.

In the 2014-2016 listing cycle, the SWQB removed previously-reported probable source lists from the Integrated Report (2014 - 2016 State of New Mexico Clean Water Act (CWA) Sections 303(d)/305(b) Integrated List of Assessed Surface Waters). These were replaced with "Source Unknown". Probable sources will be developed in TMDL planning process.

Mercury is not listed as a cause of impairment in Sandia Canyon. Copper is no longer listed as a cause of impairment in the lower assessment unit of Sandia Canyon.

21. Pajarito Canyon is impaired for Gross Alpha, Aluminum, PCBs, and Copper. Post-development erosion and watershed runoff following forest fire are listed as sources of impairment. 303b/305b 2014 Report, Appendix A at 240-43.

In the 2014-2016 listing cycle, the SWQB removed previously-reported probable source lists from the Integrated Report (2014 - 2016 State of New Mexico Clean Water Act (CWA) Sections 303(d)/305(b) Integrated List of Assessed Surface Waters). These were replaced with "Source Unknown". Probable sources will be developed in TMDL planning process.

Copper is not listed as a cause of impairment for any of the assessment units within Pajarito Canyon.

23. The target action levels (TALs) developed in the LANL IP are based on and equivalent to New Mexico State water quality criteria. LANL IP at 3 (Part I).

Per Page 3 of Part I.C. of the LANL IP, Applicable Target Action Levels are not themselves effluent limitations, but are benchmarks to determine the effectiveness of control measures implemented to meet the non-numeric technology based effluent limitations. The LANL documents cited in the petition report exceedances of TALs and do not reference NM WQC.

37. The LANL PCB Report shows that urban development in Los Alamos County is contributing large amounts of PCBs to receiving waters. The PCB Report calculated the baseline value for total PCBs in storm water runoff from the Los Alamos Townsite to be 98 ng/L, which is substantially greater than the baseline value of 11.7 ng/L that was measured for reference non-urban influenced runoff in Los Alamos County. *Id.* at 49, 64.

The PCB Report identifies baseline values but does not state that urban development in Los Alamos County is contributing large amounts of PCBs to receiving waters.

39. Studies have shown that motor oil accumulation on parking lots that then is discharged during storm events is a large contributor of zinc in storm water. *Id.* at 15.

The referenced LANL Alternative Compliance Request cites a study identifying that motor oil contains zinc, and that motor oil accumulating on paved surfaces contributes to an industrial facility's storm water discharge. It does not state that motor oil accumulation on parking lots that then is discharged during storm events is a large contributor of zinc in storm water.

47. The maximum value for dissolved cadmium in urban runoff samples from LANL and Los Alamos Townsite was 0.894 ug/L. *Id.* at 33. The TAL and NM WQC for dissolved cadmium is 0.6 ug/L. LANL IP at 4 (Part I).

Per Page 3 of Part I.C. of the LANL IP, Applicable Target Action Levels are not themselves effluent limitations, but are benchmarks to determine the effectiveness of control measures implemented to meet the non-numeric technology based effluent limitations. The LANL documents cited in the petition report exceedances of TALs and do not reference NM WQC.

48. LANL sampling found concentrations of dissolved copper in Los Alamos urban storm water discharges at values well above the NM WQC. The maximum value for dissolved copper in urban runoff samples from LANL and Los Alamos Townsite was 31.8ug/L and the mean value was 10.17 ug/L. Metals Report at 34. The TAL and NM WQC for dissolved copper is 4.3 ug/L. LANL IP at 4 (Part I).

Per Page 3 of Part I.C. of the LANL IP, Applicable Target Action Levels are not themselves effluent limitations, but are benchmarks to determine the effectiveness of control measures implemented to meet the non-numeric technology based effluent limitations. The LANL documents cited in the petition report exceedances of TALs and do not reference NM WQC.

49. The Metals Report shows that urban development in Los Alamos County is contributing large amounts of copper to receiving waters. The Metals Report calculated the baseline value for dissolved copper in storm water runoff in Los Alamos County to be 32.3 ug/L, which is substantially greater than the baseline value of 3.43 ug/L that was measured for reference non-urban influenced runoff in Los Alamos County. Metals Report at 17, 37.

The Metals Report identifies baseline values but does not state that urban development in Los Alamos County is contributing large amounts of copper to receiving waters.

50. The Metals Report shows that urban development in Los Alamos County is contributing large amounts of zinc to receiving waters. The Metals Report calculated the baseline value for dissolved zinc in storm water runoff in Los Alamos County to be 1,120 ug/L, which is substantially greater than the baseline value of 109 ug/L that was measured for reference non-urban influenced runoff in Los Alamos County. *Id.*

The Metals Report identifies baseline values but does not state that urban development in Los Alamos County is contributing large amounts of zinc to receiving waters.

51. The Metals Report shows that urban development in Los Alamos County is contributing large amounts of nickel to receiving waters. The Metals Report calculated the baseline value for dissolved nickel in storm water runoff in Los Alamos County to be 7.57 ug/L, which is substantially greater than the baseline value of 3.53 ug/L that was measured for reference non-urban influenced runoff in Los Alamos County. *Id.*

The Metals Report identifies baseline values but does not state that urban development in Los Alamos County is contributing large amounts of nickel to receiving waters.

52. LANL sampling found concentrations of dissolved zinc in Los Alamos urban storm water discharges at values well above the NM WQC. The maximum value for dissolved zinc in urban runoff samples from LANL and Los Alamos Townsite was 882 ug/L and the mean value was 181 ug/L. *Id.* at 34. The TAL and NM WQC for dissolved copper is 42 ug/L. LANL IP 4 (Part I).

ENCLOSURE 2

LANL NPDES MS4 Boundary Proposal

ENV-DO-14-0354

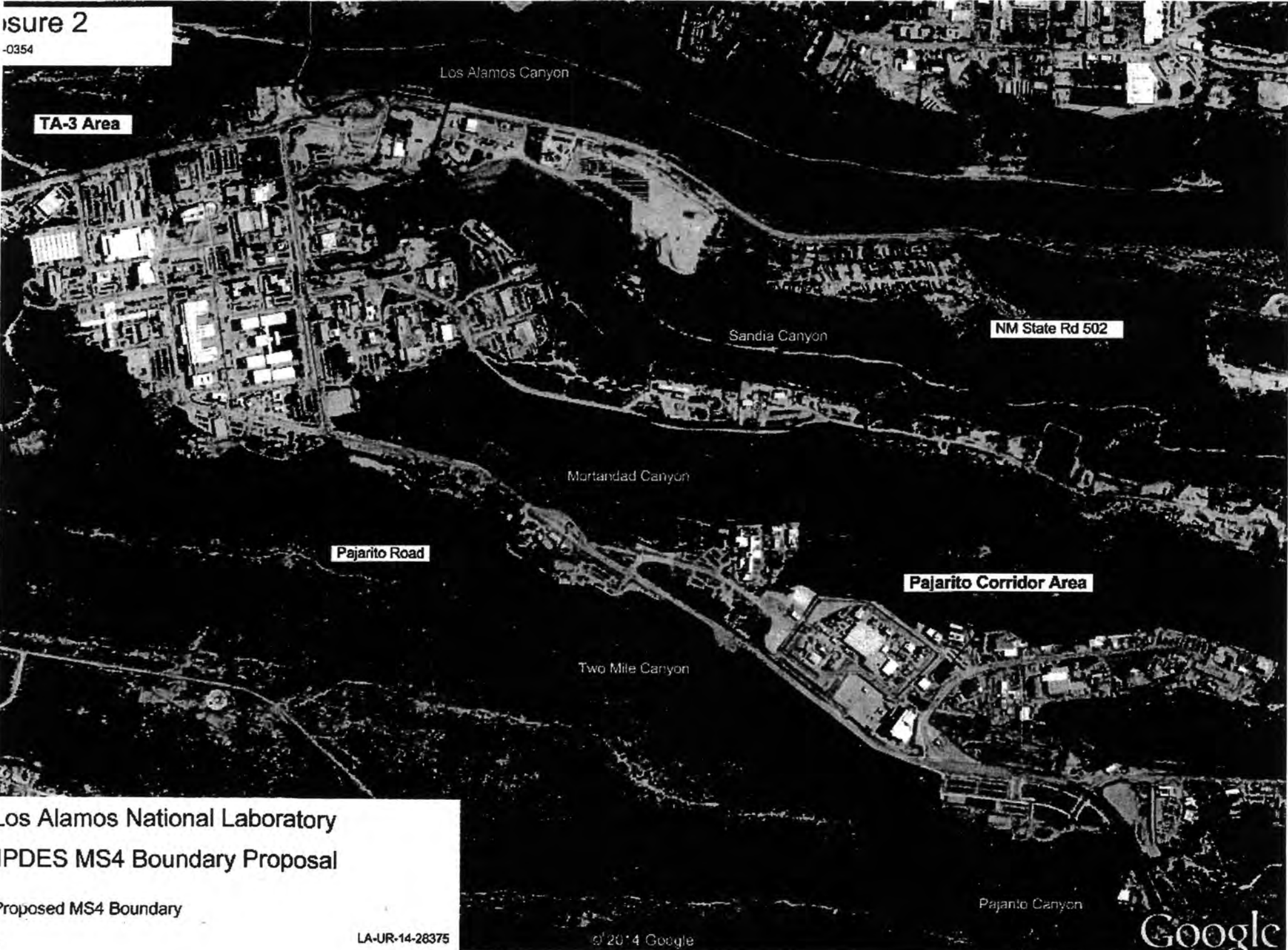
LA-UR-14-28375

Date:

NOV 20 2014

Figure 2

0354



Los Alamos National Laboratory
IPDES MS4 Boundary Proposal

Proposed MS4 Boundary

LA-UR-14-26375

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Google



LOS ALAMOS COUNTY

1000 Central Avenue, Suite 350 - Los Alamos, NM 87544
Phone (505) 663-1750 Fax (505) 662-8079
Website: www.losalamosnm.us

COUNTY COUNCIL
Council Chair
Geoff Rodgers
Council Vice-Chair
Kristin Henderson
Councilors
Frances M. Berting
Steven Girrens
David Izraelevitz
Rick Reiss
Pete Sheehy
COUNTY ADMINISTRATOR
Harry Burgess

October 29, 2014

Mr. Brent Larsen
Chief NPDES Permits and Technical Assistance Section
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Re: Response to the Amigos Bravos Petition, Dated June 30th, 2014 to William K. Honker, Division Director

Dear Mr. Larsen,

Please accept this letter in response to the petition submitted by Amigos Bravos to the Environmental Protection Agency regarding an MS4 designation for Los Alamos County. This letter will focus on four main points of discussion. First, the population of Los Alamos County has shown a decline for the last thirteen years. Second, statements gathered from existing Los Alamos National Laboratory reports and studies have not been represented accurately. Third, the downstream impact of storm water runoff from Los Alamos County and the Los Alamos National Laboratory has not had an adverse impact to the various communities. Finally, if Los Alamos County and Los Alamos National Laboratory are designated as an MS4, the boundary for the designation should be discussed.

The population in 1990 for Los Alamos County was 18,115, the 2000 population was 18,343, the 2010 population was 17,950 and the 2013 estimated population for Los Alamos County was 17,798. This shows that there has been very little growth in the County over the last twenty years. In fact, there has been a decline in the population over the last thirteen years. The persons per square mile in 2010 was 164 for the overall County.

The statement of facts gathered from the various Los Alamos National Laboratory reports have not all been portrayed accurately, as you will see in the enclosed Response to the Statement of Facts document. Several of these statements have been taken out of context.

The communities downstream of Los Alamos County and Los Alamos National Laboratory have not experienced an adverse impact from the storm water runoff. The overall conclusion from the Buckman Direct Diversion (BDD) Project, Independent Peer Review, Final Report from December 3, 2010 is as following:

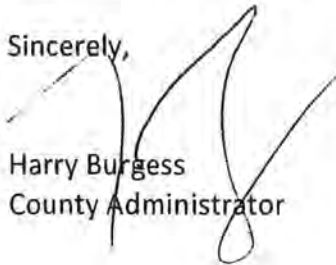
- Storm water discharge from Los Alamos County and Los Alamos National Laboratory is episodic, and does not pose a health risk, and contaminated groundwater at Los Alamos National Laboratory does not impact the water quality at the BDD intake.
- There is no significant health risk for BDD water system consumers.
- Chemical and radionuclide levels in the Rio Grande are within acceptable drinking water criteria's and/or are naturally occurring.
- There is very little if any contribution from Los Alamos County and Los Alamos National Laboratory to the Rio Grande during normal base flow conditions.
- Storm water discharge from Los Alamos County and Los Alamos National Laboratory does not pose a health risk.
- There are no contributions from Los Alamos County and Los Alamos National Laboratory groundwater to the Buckman well field.

Therefore, based on the above information, Los Alamos County respectfully requests that the EPA respond to the petition with a "No Designation" finding.

However, per your request, if Los Alamos County is designated as an MS4, the County requests that the boundary of the designation be limited to the Urbanized Cluster areas be confined to the mesa tops of Los Alamos town site. Los Alamos National Laboratory will provide a similar map of their requested designated areas. Additionally, the County requests that White Rock not be included in the designation. The 2010 population density of White Rock is approximately 812 people per square mile, which is below the 1,000 people per square mile requirement for an MS4 Phase II designation. Enclosed is an exhibit of the proposed boundary limits.

Additionally, if Los Alamos County is designated as an MS4, then the County requests to be covered under a General Permit. This will allow the County to partner with Los Alamos National Laboratory and utilize the resources and expertise of each agency to meet the six minimum control measures required by an MS4 designation.

If you require additional information, please contact Bryan Aragon at 505.662.8117 or bryan.aragon@lacnm.us.

Sincerely,

Harry Burgess
County Administrator

Enclosures

Response to the Statement of Facts

Below are responses to the statement of fact submitted by Amigos Bravos. The statements which are not listed below did not require a written response or were assigned a "no comment" response. These responses are a collaborative effort between Los Alamos County and Los Alamos National Laboratory.

✓ 1. Los Alamos County is located in north-central New Mexico, approximately 60 miles north northeast of Albuquerque and 25 miles northwest of Santa Fe.

We concur.

2. According to the 2010 Census, the county has a population of 17,950. The main population center is called the Los Alamos Town site. The Town site is a Census Designated Place (CDP) and according to the 2010 Census the population of the CDP was 12,019. According to the 2010 Census, the density of the Los Alamos Town site CDP is 1,078.7 persons per square mile. The other densely inhabited place in the County is the community of White Rock Canyon, which is also a CDP. According to the 2010 Census the population of White Rock Canyon is 5,725 and the density is 811.8 persons per square mile. 2010 Census, <http://quickfacts.census.gov/qfd/states/35/3542320.html>.

The 1990 population for Los Alamos County was 18,115, the 2000 population was 18,343, the 2010 population was 17,950 and the 2013 estimated population for Los Alamos County is 17,798. This shows that there has been very little growth to the County over the last twenty years. The persons per square mile in 2010 was 164 for the overall County.

✓ 6. The Pajarito Plateau consists of a series of finger-like mesas separated by deep east-to-west-oriented canyons cut by streams. The mesa tops range in elevation from approximately 7,800 feet on the flanks of the Jemez Mountains to about 6,200 feet at the edge of White Rock Canyon. Most Laboratory and community developments are confined to the mesa tops.

We concur, most of the Laboratory and Los Alamos Town site are confined to the mesa tops.

13. Pueblo Canyon is impaired for Gross Alpha, PCBs, Aluminum, Copper, and Zinc. Industrial/commercial site storm water discharge, post-development erosion and sedimentation are listed as sources of impairment.⁷

In the 2014-2016 listing cycle, the SWQB removed previously-reported probable source lists from the Integrated Report (2014 - 2016 State of New Mexico Clean Water Act (CWA) Sections 303(d)/305(b) Integrated List of Assessed Surface Waters). These were replaced with "Source Unknown". Probable sources will be developed in TMDL planning process.

The report was adopted by the WQCC on September 9, 2014 and forwarded to EPA Region VI for approval.

Copper is not listed as a cause of impairment for the main stem of Pueblo Canyon from the headwaters to Los Alamos Canyon

14. New Mexico Environment Department (NMED) data presented in NMED's Pajarito Plateau Assessment show levels of PCBs in Pueblo Canyon right in the middle of the urbanized areas at LANL and at Los Alamos Town site (sampling station EO55) to be over 3,500 times greater than the New Mexico Human Health WQC and 16 times greater than the New Mexico Wildlife Habitat WQC.⁸

The NMED Pajarito Plateau Assessment identifies a sample that was taken within Pueblo Canyon at the levels indicated, but this sample was not taken at sampling station EO55. Also, none of the urbanized areas at LANL discharge to Pueblo Canyon.

15. Mortandad Canyon is impaired for Aluminum, Copper and Gross Alpha. Impervious surface/parking lot runoff, post-development erosion and sedimentation, and watershed runoff following forest fire are listed as sources of impairment. 303b/305b 2014 Report, Appendix A at 238.

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16. Los Alamos Canyon within LANL property is impaired for Gross Alpha, PCBs, Aluminum, Copper, Mercury, and Zinc. *Id.* at 125 and 127.

Copper and zinc are not listed as a cause of impairment for the main stem of Los Alamos Canyon located within LANL property. In the 2014-2016 listing cycle, mercury was removed as a cause of impairment in the assessment unit below DP Canyon to LANL boundary.

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Mercury is not listed as a cause of impairment in Sandia Canyon. Copper is no longer listed as a cause of impairment in the lower assessment unit of Sandia Canyon.

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30. When collecting data for the PCB report, storm water samplers were placed in ephemeral channels around the edge of urban development in Los Alamos County and LANL. No urban samplers were located below any know areas of concentrated contamination (point sources). PCB Report at 59.

The Current understanding of geo-hydrologic modeling in the regional aquifer suggests the aquifer pumped by the Buckman well field is not directly fed by the aquifer underlying the Los Alamos County localized region.

37. The LANL PCB Report shows that urban development in Los Alamos County is contributing large amounts of PCBs to receiving waters. The PCB Report calculated the baseline value for total PCBs in storm water runoff from the Los Alamos Town site to be 98 ng/L, which is substantially greater than the baseline value of 11.7 ng/L that was measured for reference non-urban influenced runoff in Los Alamos County. *Id.* at 49, 64.

The PCB Report identifies baseline values but does not state that urban development in Los Alamos County is contributing large amounts of PCBs to receiving waters.

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55. LANL reports in their 2013 Alternative Compliance request to EPA that the primary source of PCB exceedances of permit TALs (and therefore NM WQC) at site monitoring area S-SMA-.25 is from urban runoff. *Id.* at 22.

Per Page 3 of Part I.C. of the LANL IP, Applicable Target Action Levels are not themselves effluent limitations, but are benchmarks to determine the effectiveness of control measures implemented the non-numeric technology based effluent limitations. LANL documents cited in this petition report exceedances of TALs and do not reference NM WQC.

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57. LANL identifies urban runoff from sources such as brake pad wear on parking lots, galvanized fencing, culverts and other building materials as the sources of zinc and copper exceedances of TALs (same as NM WQC). *Id.* at 31.

Per Page 3 of Part I.C. of the LANL IP, Applicable Target Action Levels are not themselves effluent limitations, but are benchmarks to determine the effectiveness of control measures implemented the non-numeric technology based effluent limitations. LANL documents cited in this petition report exceedances of TALs and do not reference NM WQC.

58. Site-specific storm water run-on samples collected by LANL in Sandia Canyon demonstrate urban storm water runoff contributes to TAL (same as NM WQC) exceedances of PCBs. *Id.*

Per Page 3 of Part I.C. of the LANL IP, Applicable Target Action Levels are not themselves effluent limitations, but are benchmarks to determine the effectiveness of control measures implemented the non-numeric technology based effluent limitations. LANL documents cited in this petition report exceedances of TALs and do not reference NM WQC.

59. In another drainage area in Sandia Canyon (S-SMA-2.0), LANL identifies anthropogenic urban sources as one of the sources of TAL (and NM WQC) exceedances for PCBs. Alternative Compliance Request 2 at 14.

Per Page 3 of Part I.C. of the LANL IP, Applicable Target Action Levels are not themselves effluent limitations, but are benchmarks to determine the effectiveness of control measures implemented the non-numeric technology based effluent limitations. LANL documents cited in this petition report exceedances of TALs and do not reference NM WQC.

60. LANL identifies runoff from urban development as the likely source of TAL (and NM WQC) exceedances for copper. At one specific site in Sandia Canyon, which is the focus of one of their alternative compliance request, copper exceedances from urban runoff ranged from 4.78 ug/L to 21.3 ug/L. The TAL (same as NM WQC) for copper is 4.3 ug/L. *Id.* at 16.

Per Page 3 of Part I.C. of the LANL IP, Applicable Target Action Levels are not themselves effluent limitations, but are benchmarks to determine the effectiveness of control measures implemented the non-numeric technology based effluent limitations. LANL documents cited in this petition report exceedances of TALs and do not reference NM WQC.

61. LANL identifies runoff from urban development as the likely source of TAL (and NM WQC) exceedances for zinc. At one specific site in Sandia Canyon (S-SMA-2.0), which is the focus of one of their alternative compliance requests, zinc exceedances from urban runoff ranged from 30.9 ug/L to 61.2 ug/L. The TAL (same as NM WQC) for zinc is 42 ug/L. *Id.* at 21.

Per Page 3 of Part I.C. of the LANL IP, Applicable Target Action Levels are not themselves effluent limitations, but are benchmarks to determine the effectiveness of control measures implemented the non-numeric technology based effluent limitations. LANL documents cited in this petition report exceedances of TALs and do not reference NM WQC.

63. In 2009 the New Mexico Environment Department (NMED) issued a Notice of Violation (NOV) and proposed penalty of \$13,200 to Los Alamos County for violating state surface water quality standards by discharging contaminated storm water.¹⁰

The County has since mitigated this site and no penalty charges were paid. In 2012, the County constructed a retention pond to prevent the release of storm water from the site. Since then, a private developer has improved the site and provided water quality measures while maintaining a retention pond to prevent the release of storm water runoff from the site.

64. NMED collected storm water samples on 8/3/07 that showed a geometric mean of 0.16316 ug/ of PCBs. They collected another set of samples on 9/5/07 that revealed a geometric mean of 0.00360 ug/L of PCBs. These samples were approximately 255 times and six times the state's PCB human health WQC. The 8/3/07 sample was 12 times the PCB wildlife habitat WQC. Press Release LA County Violations.

As stated above this site has been mitigated by building a retention pond to prevent the release of storm water runoff from the site.

65. NMED sampling data in 2007 and 2006 show levels of PCBs in storm water draining off of urban areas in Los Alamos Town site to be more than 34,000 times greater than the NM Human Health WQC. The concentration of PCBs at Los Alamos County Yard (site 1; 28CtyYdSite1) on 8/2/06 was 22.2 ug/L, which is over 34,000 times greater than the Human Health WQC. A sample taken on 7/26/07 from Timber Ridge (Timber Ridge drainage; 28TimbRg000.2) showed a PCB concentration of 0.133 ug/L, which is 207 times greater than the Human Health WQC. Timber Ridge is a development of apartment buildings in Los Alamos Town site that drains into Los Alamos Canyon.¹¹

As stated above this site has been mitigated by building a retention pond to prevent the release of storm water runoff from the site.

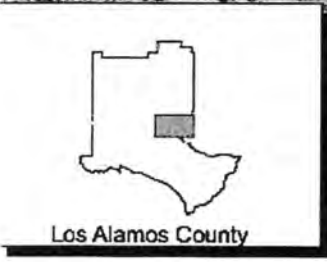
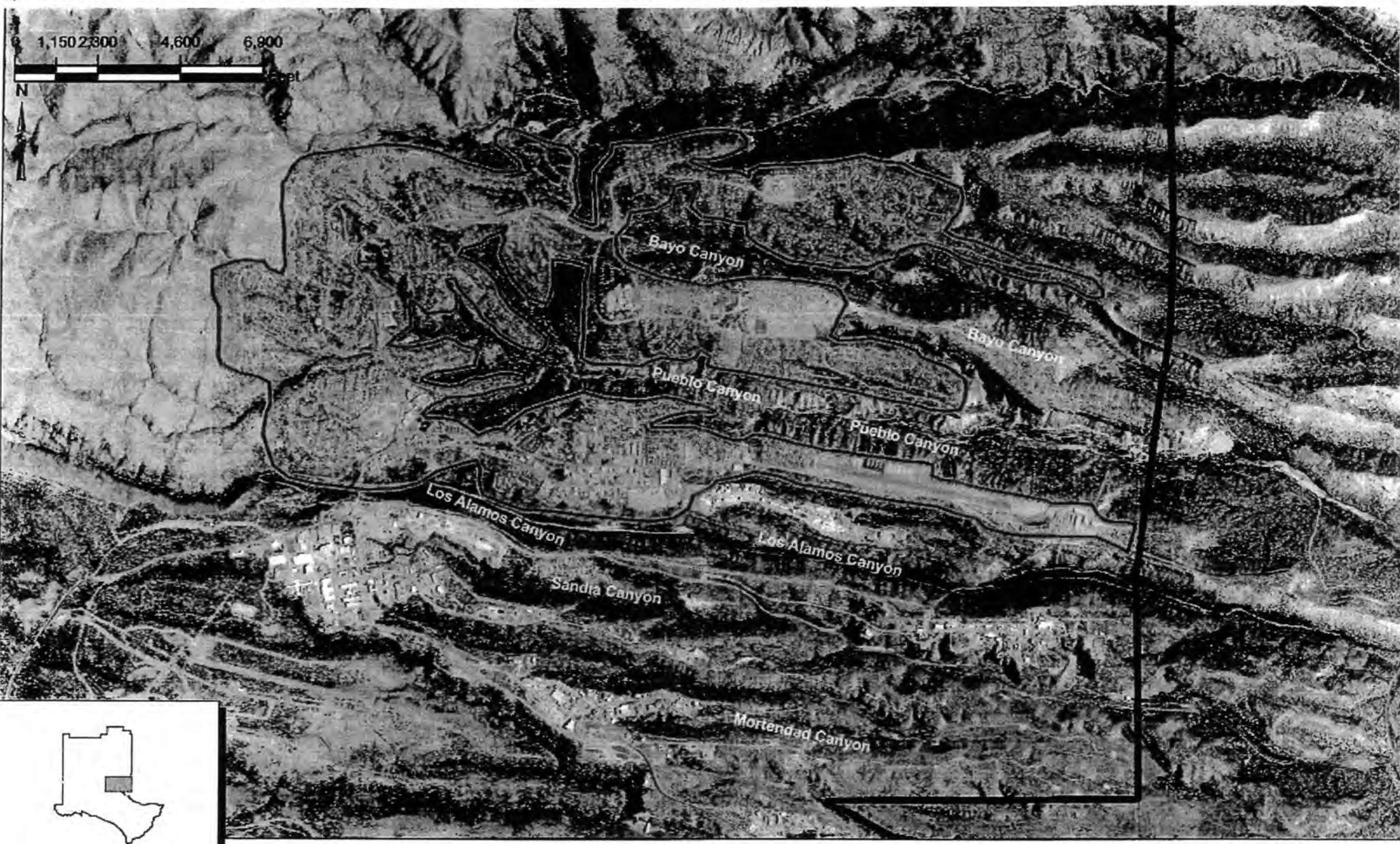
66. The City of Santa Fe diverts water from the Rio Grande at its surface water diversion, the Buckman Direct Diversion Project. This surface water is critical to Santa Fe's effort to meet its current and future water needs. City of Santa Fe, *How the BDD Works*, <http://bddproject.org/about-the-bdd/how-the-bdd-works/>. Santa Fe shuts down its diversion whenever the City's monitors in Los Alamos and Pueblo Canyons detect storm water flows. City of Santa Fe, *Buckman Direct Diversion Project Water Quality FAQs*, <http://bddproject.org/water-quality/water-quality-faqs/>.

We concur, however the overall conclusion from the Buckman Direct Diversion Project, Independent Peer Review, Final Report from December 3, 2010 states the following:

- *Storm water discharge from Los Alamos County and LANL is episodic, and does not pose a health risk, and contaminated groundwater at Los Alamos County and LANL does not impact the water quality at the BDD intake.*
- *There is no significant health risk for BDD water system consumers.*
- *Chemical and radionuclide levels in the Rio Grande are within acceptable drinking water criterias and/or are naturally occurring.*
- *There is very little if any contribution from Los Alamos County and LANL to the Rio Grande during normal base flow conditions.*
- *Storm water discharge from Los Alamos County and LANL does not pose a health risk.*
- *There are no contributions from Los Alamos County and LANL groundwater to the Buckman well field.*

67. The City of Albuquerque also diverts surface water from the Rio Grande and uses it for drinking water. Albuquerque Bernalillo County Water Utility Authority, *San Juan Chama Project*, http://www.abcwua.org/San_Juan_Chama_Project.aspx. The City relies upon this diversion project, referred to as the San Juan-Chama Drinking Water Project, for the majority of the City's drinking water and projects a substantial need for this surface water far into the future.¹²

The City of Albuquerque and the Albuquerque Bernalillo Water Utility Authority have consistently used San Juan-Chama water captured in the Rio Grande with the water delivered to their customers meeting all Safe Drinking Water Quality requirements.



Los Alamos County

Vicinity Map

Los Alamos County
Proposed MS-4 Boundary

Legend

- Proposed MS-4 Boundary
- Los Alamos County Boundary

Appendix 3: Public comments



Michelle Lujan Grisham
Governor

Howie C. Morales
Lt. Governor

**NEW MEXICO
ENVIRONMENT DEPARTMENT**

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James C. Kenney
Cabinet Secretary

Jennifer J. Pruett
Deputy Secretary

October 18, 2019

Ken McQueen
Regional Administrator
USEPA Region 6
1201 Elm St.
Dallas, TX 75202

Re: Los Alamos Residual Designation Petition

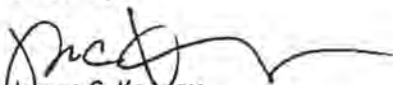
Dear Regional Administrator McQueen:

The New Mexico Environment Department (NMED) supports the proposed MS4 designation for Los Alamos County. Designation of this particular area under the stormwater permitting program would provide, among other benefits, a comprehensive mechanism to coordinate efforts to address contaminated stormwater. Urban stormwater studies have been conducted by both Los Alamos National Laboratory and NMED. These studies confirm that elevated levels of metals and PCBs are contained in urban stormwater leaving the impervious areas of the Lab and the County. As these areas discharge to what later becomes a drinking water source for both the City of Santa Fe and the City of Albuquerque, in addition to a source for irrigation uses along the Rio Grande, NMED underscores the importance of this designation to assist in the protection of human health and the environment.

As noted in the Residual Designation Petition submitted to EPA by Amigos Bravos in 2014 and EPA's March 2015 Preliminary Determination (80 FR 13852), stormwater is a significant source contributing to the continued water quality impairments documented in NMED's 2018-2020 CWA Section 303(d) List of Impaired Waters. We agree with EPA's Preliminary Determination that the regulatory criteria for making a residual designation are met in this case (40 CFR 122.26). An updated list of the current impairments is included with this letter as Appendix A, which includes all Pajarito Plateau watersheds in addition to the Rio Grande below Los Alamos.

This letter supersedes the letter dated June 15, 2015, conveying NMED's prior position on the MS4 designation. If you require any further data or assistance, please do not hesitate to reach out to my staff in the Surface Water Quality Bureau. NMED looks forward to engaging with EPA Region 6 to continue strong protections for our precious water resources in New Mexico.

Sincerely,


James C. Kenney
Cabinet Secretary

Cc: Charles Maguire, Director, Water Quality Protection Division, EPA Region 6
Rebecca Roose, Director, Water Protection Division, NMED

Attachment A:

Water Quality Impairments from NMED's 2018-2020 CWA §303(d)/§305(b) Integrated List:

Segment	WQS Reference	Impairments	TMDL/4b
Acid Canyon (Pueblo to headwaters)	20.6.4.98 NMAC	Adjusted gross alpha, PCBs in water column, dissolved copper, TR aluminum	None
Bayo Canyon (San Ildefonso boundary to headwaters)	20.6.4.98 NMAC	Not assessed	None
DP Canyon (Los Alamos Canyon to LANL bnd)	20.6.4.128 NMAC	Adjusted gross alpha, PCBs in water column, TR aluminum	None
Graduation Canyon (Pueblo Canyon to headwaters)	20.6.4.98 NMAC	Dissolved copper, PCBs in water column	None
Guaje Canyon (San Ildefonso bnd to headwaters)	20.6.4.98 NMAC	Fully supporting	None
Kwage Canyon (Pueblo Canyon to headwaters)	20.6.4.98 NMAC	Not assessed	None
Los Alamos Canyon (DP Canyon to upper LANL bnd)	20.6.4.128 NMAC	PCB in water column, adjusted gross alpha, total mercury, total recoverable cyanide, total recoverable selenium	None
Los Alamos Canyon (Los Alamos Rsvr to headwaters)	20.6.4.127 NMAC	Fully supporting	None
Los Alamos Canyon (NM-4 to DP Canyon)	20.6.4.128 NMAC	Adjusted gross alpha, PCBs in water column, total recoverable aluminum, total recoverable cyanide, radium, total mercury	None
Los Alamos Canyon (San Ildefonso bnd to NM-4)	20.6.4.98 NMAC	Not assessed	None
Los Alamos Canyon (Upper LANL bnd to Los Alamos River)	20.6.4.98 NMAC	Not assessed	None
Pojoaque River (San Ildefonso bnd to Pojoaque bnd)	20.6.4.114 NMAC	PCBs in water column	None
Pueblo Canyon (Acid Canyon to headwaters)	20.6.4.98 NMAC	PCBs in water column, total recoverable aluminum, adjusted gross alpha, dissolved copper	None

Pueblo Canyon (Los Alamos Canyon to Los Alamos WWTP)	20.6.4.98 NMAC	Adjusted gross alpha, PCBs in water column, total recoverable aluminum, total recoverable selenium	None
Pueblo Canyon (Los Alamos WWTP to Acid Canyon)	20.6.4.98 NMAC	PCBs in water column, adjusted gross alpha	None
Rendija Canyon (Guaje Canyon to headwaters)	20.6.4.98 NMAC	Not assessed	None
Rio Grande (Ohkay Owingeh bnd to Embudo Creek)	20.6.4.114 NMAC	PCB in fish tissue, turbidity	None
Rio Grande (Santa Clara Pueblo bnd to Ohkay Owingeh bnd)	20.6.4.114 NMAC	Turbidity, PCBs in fish tissue	None
South Fork Acid Canyon (Acid Canyon to headwaters)	20.6.4.98 NMAC	Adjusted gross alpha, PCBs in water column, dissolved copper	None
Walnut Canyon (Pueblo Canyon to headwaters)	20.6.4.98 NMAC	PCBs in water column, dissolved copper	None
Alamo Canyon (Rio Grande to headwaters)	20.6.4.121 NMAC	Not assessed	None
Ancho Canyon (North Fork to headwaters)	20.6.4.128 NMAC	PCBs in water column	None
Ancho Canyon (Rio Grande to North Fork Ancho)	20.6.4.128 NMAC	PCBs in water column, total mercury	None
Arroyo de la Delfe (Pajarito Canyon to headwaters)	20.6.4.128 NMAC	Adjusted gross alpha, total recoverable aluminum, dissolved copper, PCBs in water column	None
Canada del Buey (San Ildefonso Pueblo bnd to LANL bnd)	20.6.4.98 NMAC	Not assessed	None
Canada del Buey (within LANL)	20.6.4.128 NMAC	PCBs in water column, adjusted gross alpha	None
Canon de Valle (LANL gage E256 to Burning Ground Spg)	20.6.4.126 NMAC	PCBs in water column	None

Canon de Valle (below LANL gage E256)	20.6.4.128 NMAC	Adjusted gross alpha	None
Canon de Valle (Upper LANL bnd to headwaters)	20.6.4.98 NMAC	PCBs in water column, adjusted gross alpha	None
Canon de Valle (within LANL above Burning Ground Spr)	20.6.4.128 NMAC	Not assessed	None
Chaquehui Canyon (within LANL)	20.6.4.128 NMAC	PCBs in water column	None
Fence Canyon (above Potrillo Canyon)	20.6.4.128 NMAC	Not assessed	None
Indio Canyon (above Water Canyon)	20.6.4.128 NMAC	Not assessed	None
Mortendad Canyon (within LANL)	20.6.4.128 NMAC	Adjusted gross alpha, total mercury, PCBs in water column, dissolved copper	None
North Fork Ancho Canyon (Ancho Canyon to headwaters)	20.6.4.128 NMAC	Adjusted gross alpha, PCBs in water column	None
Pajarito Canyon (Arroyo de la Delfe to Starmers Spring)	20.6.4.126 NMAC	Fully supporting	None
Pajarito Canyon (Rio Grande to LANL bnd)	20.6.4.98 NMAC	Fully supporting	None
Pajarito Canyon (Upper LANL bnd to headwaters)	20.6.4.99 NMAC	PCBs in water column, total recoverable aluminum, adjusted gross alpha, total recoverable cyanide, total mercury	None
Pajarito Canyon (within LANL above Starmers Gulch)	20.6.4.128 NMAC	Aluminum, adjusted gross alpha	None
Pajarito Canyon (within LANL below Arroyo de la Delfe)	20.6.4.128 NMAC	Aluminum, PCBs in water column	None
Potrillo Canyon (above Water Canyon)	20.6.4.128 NMAC	Adjusted gross alpha	None

Rio Grande (Cochiti Reservoir to San Ildefonso bnd)	20.6.4.114 NMAC	Turbidity, PCBs in fish tissue, PCBs in water column, E. coli, adjusted gross alpha, dissolved aluminum, thallium, total recoverable selenium, total recoverable cyanide	None
Rito de los Frijoles (Rio Grande to Upper Crossing)	20.6.4.121 NMAC	DDT in fish tissue, total recoverable Aluminum	None
Rito de los Frijoles (Upper crossing to headwaters)	20.6.4.121 NMAC	DDT in fish tissue, total recoverable Aluminum	None
Sandia Canyon (Sigma Canyon to Outfall 001)	20.6.4.126 NMAC	Total recoverable aluminum, PCBs in water column, dissolved copper, temperature	None
Sandia Canyon (within LANL below Sigma Canyon)	20.6.4.128 NMAC	PCBs in water column, total recoverable aluminum, adjusted gross alpha, total mercury	None
Ten Site Canyon (Mortendad Canyon to headwaters)	20.6.4.128 NMAC	Adjusted gross alpha, PCBs in water column	None
Three Mile Canyon (Pajarito Canyon to headwaters)	20.6.4.128 NMAC	Adjusted gross alpha	None
Two Mile Canyon (Pajarito to headwaters)	20.6.4.128 NMAC	Adjusted gross alpha, PCBs in water column, total recoverable aluminum, dissolved copper	None
Water Canyon (Area A Canyon to NM 501)	20.6.4.126 NMAC	Fully supporting	None
Water Canyon (Rio Grande to lower LANL bnd)	20.6.4.98 NMAC	Not assessed	None
Water Canyon (Upper LANL bnd to headwaters)	20.6.4.98 NMAC	Total recoverable aluminum, total mercury	None
Water Canyon (within LANL below Area A Canyon)	20.6.4.128 NMAC	Total recoverable aluminum, PCBs in water column, adjusted gross alpha, total mercury	None



P.O. Box 238, Taos, NM 87571
575.758.3474

Evelyn Rosborough
Water Quality Protection Division
U.S. EPA Region 6
1445 Ross Ave., Suite 1200
Dallas, TX 75202
Submitted via email to rosborough.evelyn@epa.gov

June 11, 2015

RE: EPA's Preliminary Determination to Designate MS4s on Los Alamos National Laboratory Property and Urban Portions of Los Alamos County as Storm Water Discharges Requiring Clean Water Act Permit Coverage Pursuant to 40 CFR § 122.26(a)(9)(i)(A), 122.26(a)(9)(i)(D), and 122.32(a)(2).

Dear Ms. Rosborough:

Amigos Bravos writes in support of EPA's preliminary designation of MS4s on Los Alamos National Laboratory (LANL) property and urban areas of Los Alamos County. This preliminary designation, made in response to our June 30th, 2014 petition, is a critical first step in protecting the Rio Grande and its tributaries on the Pajarito Plateau from pollution from urban stormwater discharges at LANL and in Los Alamos County. We urge you to finalize this designation and issue a NPDES permit as quickly as possible.

Amigos Bravos supports EPA's proposed coverage area with a minor exception: the developed area south of the area proposed for coverage in the community of White Rock should also be included in the designation. This area shows up very clearly in EPA's map of proposed areas to be covered as a distinct cluster of development. Although this area may be slightly less dense than other proposed portions of Los Alamos County, it is contiguous to both the proposed areas for coverage in White Rock as well as to LANL and is considerably more dense in population than other areas in Los Alamos County. In addition, most of the urbanized areas within this portion of White Rock sit close to the edge of the canyons that flow directly into the Rio Grande. EPA should expand the area of coverage to include this developed area.

EPA's "Los Alamos County Preliminary Designation Document" does not include Amigos Bravos' Statement of Facts that was submitted as part of our petition, yet it does include LANL and Los Alamos County responses to this Statement of Facts. Amigos

Bravos believes it is appropriate to include the full Statement of Facts document in the Preliminary Designation Document.

Urban storm water pollution from LANL and Los Alamos County should be covered by an individual permit. Both the nature of the pollution and the current monitoring infrastructure that is unique to this area support the case for coverage under an individual permit. The urban storm water runoff from developed areas at LANL and the Los Alamos Townsite are additionally harmful because of LANL's history of releases. Many of the canyons on the Pajarito Plateau have old dump sites called solid waste management units (SWMUS), which continue to release pollution. Annual reports for LANL's individual industrial storm water permit (IP) detail the scope of continuing storm water exceedances from these SWMUS. Specifically, of the 246 sites for which samples were collected, 233 of them had releases that exceeded water quality standards.¹ Some of these exceedances continue to be over 32,000 times greater than water quality standards.² The urban storm water that is discharged into these canyons exacerbates and mobilizes this historic toxic pollution. The unique contamination issues associated with Los Alamos merit the individual treatment and monitoring opportunities available under an individual permit. LANL, as demonstrated by its detailed background study reports on PCBs and Metals, as well as by its extensive monitoring under the IP, has the needed monitoring infrastructure already in place as well as an extensive baseline to compare monitoring results collected under an individual MS4 permit.

An individual permit could provide for not only the needed monitoring but also for specific treatment options that are not available under the general small MS4 permit. Appropriate treatment options for Los Alamos could be similar to those proposed for the individual MS4 permit for Charles County, Maryland under which treatment of twenty percent of the County's impervious surface would be required by the end of the 5-year permit term.³

We believe that our Petition and associated Statement of Facts far exceeds the statutory and regulatory requirements to trigger action under EPA's residual designation authority. The unique nature of the site and monitoring under existing regulatory structures led to the availability of detailed monitoring data and compliance documents. This type of

¹ Los Alamos National Laboratory, *Storm Water Individual Permit Annual Report, Reporting Period: January 1–December 31, 2013, NPDES Permit No 0030759 154* (March 2014) (table 8.2), <http://permalink.lanl.gov/object/tr?what=info:lanl-repo/epr/ERID-254067>.

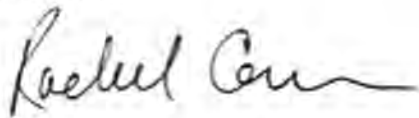
² Los Alamos National Laboratory, *Renewal Application for NPDES Permit Number NM0030759, Individual Permit for Storm Water Discharges from Solid Waste Management Units and Areas of Concern, Volume 1 of 2 133* (March 2014) (Table 10), <http://permalink.lanl.gov/object/tr?what=info:lanl-repo/epr/ERID-254864>.

³ *Maryland Department of the Environment Draft National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System Permit 8* (June 18, 2014) (Draft permit for Charles County, Maryland. Permit No MD0068365, <http://www.mde.state.md.us/programs/Water/StormwaterManagementProgram/Documents/Charles%20Permit%20tentative%20determination.pdf>).

detailed information is not likely to be in place in many other areas where it is appropriate for EPA to exert its residual designation authority. All that EPA needs in order to make determinations under its residual designation authority is a understanding of the contaminants routinely found in the type of discharges to be regulated and documentation of impacts to downstream water quality such as through citation of relevant 303d/305B impairments.

Again, Amigos Bravos supports EPA's preliminary designation and urges EPA to quickly finalize this designation and move forward with issuing a MS4 permit for LANL and urbanized portions of Los Alamos County. We look forward to continued discussions and public input opportunities as the process moves forward.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rachel Conn".

Rachel Conn
Interim Executive Director
Amigos Bravos



Communities For Clean Water

June 15, 2015

Evelyn Rosborough
Water Quality Protection Division
U.S. EPA Region 6
1445 Ross Ave., Suite 1200
Dallas, TX 75202
Submitted via email to rosborough.evelyn@epa.gov

Re: EPA's Preliminary Determination that Discharges of Storm Water from MS4s at LANL and Los Alamos County Result in Exceedances of Water Quality Standards and Require Clean Water Act Permit Coverage.

Dear Ms. Rosborough:

Communities for Clean Water (CCW) is a network of organizations whose mission is to ensure that community waters impacted by Los Alamos National Laboratory (LANL) are kept safe for drinking, agriculture, sacred ceremonies, and a sustainable future. Our growing network includes Concerned Citizens for Nuclear Safety (CCNS), Amigos Bravos, Honor Our Pueblo Existence (HOPE), the New Mexico Acequia Association, Partnership for Earth Spirituality, and Tewa Women United. CCW brings together the vast expertise and commitment of widely respected and well-tested advocacy groups from culturally diverse backgrounds. Collectively CCW represents the only community-based coalition in Northern New Mexico that has been monitoring and advocating for better public water policy to address the toxic threats from LANL to the Pajarito Plateau and the Rio Grande. As the sacred homeland of the Pueblo Peoples it is vitally important that clean water be protected on the Pajarito Plateau. We write today to give our support to the Environmental Protection Agency's (EPA's) March 6th, 2015 Preliminary Determination that Discharges from Municipal Separate Storm Sewer Systems (MS4s) at LANL and Los Alamos County Result in Exceedances of Water Quality Standards and Require Clean Water Act Permit Coverage (Preliminary Determination).

CCW has been working as a coalition to address contaminated storm water runoff from LANL and Los Alamos County since 2006. While we have been encouraged by some progress made under the Individual Industrial Storm water Permit to address contaminated storm water runoff, we are concerned by the overwhelming data and evidence that indicates that storm water contamination from urban sources on the Pajarito Plateau is contributing to violations of water quality standards. We are encouraged that EPA is following through on its the responsibility to ensure that the waters of the Pajarito Plateau and the Rio Grande are protected by issuing this Preliminary Determination.

CCW calls on EPA to include the small urbanized area in White Rock that has been left out of the EPA's proposed coverage area in the final MS4 coverage area. This subdivision is close to the Mortandad and White Rock canyons and therefore has the potential to release storm water discharges directly into the Pajarito Plateau tributaries as well as directly into the Rio Grande. To protect water quality this area should be included in the final coverage area.

Given the nature of the pollution and the extensive monitoring infrastructure already in place at LANL, CCW calls on EPA to move forward expeditiously with issuing an Individual MS4 permit that includes rigorous monitoring and treatment requirements. Coverage under the General Small MS4 Permit will not be adequate to address the level of contaminants found in the urban storm water discharges coming off of LANL and Los Alamos County's urbanized areas. Site-specific treatment and monitoring requirements are necessary to control these contaminated storm water discharges.

In closing, the Communities for Clean Water urge EPA to move forward expeditiously with making a Final Determination that Discharges from Municipal Separate Storm Sewer Systems (MS4s) at LANL and Los Alamos County Result in Exceedances of Water Quality Standards and Require Clean Water Act Permit Coverage.

Sincerely,

Marian Naranjo
Honor Our Pueblo Existence
mariann2@windstream.net

Kathy Sanchez and Beata Tsosie-Pena
Tewa Women United
Kathy@tewawomenunited.org and Beata@tewawomenunited.org

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April 15, 2015

Evelyn Rosborough
Water Quality Protection Division
U.S. EPA Region 6
1445 Ross Ave., Suite 1200
Dallas, TX 75202

Submitted via email to rosborough.evelyn@epa.gov

Re: Preliminary Designation of Certain Stormwater Discharges in the State of New Mexico Under the National Pollutant Discharge Elimination System of the Clean Water Act, 80 Fed. Reg. 13,852 (Mar. 17, 2015)

Dear Ms. Rosborough:

The Natural Resources Defense Council (NRDC) and American Rivers appreciate the opportunity to comment on the preliminary designation of stormwater discharges from sites in Los Alamos County, New Mexico. NRDC and American Rivers strongly support this exercise of EPA's authority to designate known and potential contributors to water quality violations, and we urge the agency to finalize the designation as proposed.

As EPA notes in the designation document, the Clean Water Act provides that the agency shall require a permit for any "stormwater discharge [that] contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States,"¹ a mandate that is echoed in EPA's own implementing regulations.² This "residual designation authority" (RDA) is a critical tool to ensure that problematic discharges of stormwater do not go uncontrolled.

Once EPA has made a finding that a discharge meets the statutory criterion of "contribut[ing] to a violation of a water quality standard," it must designate that discharge for regulation, and the discharger "*shall* be required to obtain a NPDES permit."³ In other words, "the Agency's residual designation authority is not optional."⁴ As EPA has explained, "designation is

¹ 33 U.S.C. § 1342(p)(2)(E).

² 40 C.F.R. § 122.26(a)(9)(i)(D).

³ *Id.* (emphasis added).

⁴ *In re Stormwater NPDES Petition*, 910 A.2d 824, 835-36 (Vt. 2006).

appropriate as soon as the adverse impacts from storm water are recognized.”⁵ EPA has not previously defined a threshold level of contribution to water quality standards violations that would suffice to make such a determination. However, the agency has advised delegated States that “it would be reasonable to require permits for discharges that contribute more than *de minimis* amounts of pollutants identified as the cause of impairment to a water body.”⁶ The Supreme Court of Vermont has recognized this analysis as a valid interpretation of the RDA threshold.⁷

The preliminary designation of stormwater discharges in Los Alamos County far exceeds the statutory and regulatory minimum criteria for the use of EPA’s residual designation authority. The rules’ designation trigger is satisfied upon a showing that the discharges in question are a contributing source of non-*de minimis* levels of pollutants for which receiving waters are listed as impaired. Petitioners have provided more than enough evidence to meet this test and prove that the Los Alamos County discharges are contributing to water quality standards violations.

First, the petitioners (Amigos Bravos) have more than adequately proved that the Los Alamos County discharges contain the same pollutants that are impairing receiving waters. All that EPA needed in order to make this determination was a basic understanding of the contaminants routinely found in the type of discharges to be regulated (and, in fact, the designation document cites several sources of such information, including the Nationwide Urban Runoff Program and the National Stormwater Quality Database). Amigos Bravos far exceeded this standard of proof by citing monitoring data from the particular Los Alamos County areas in question.

Further, showing that the pollutants in the designated discharges are contributing to exceedances of water quality standards can be done by evaluating the water quality downstream of the discharges. Amigos Bravos has more than adequately verified the impact of the discharges on receiving water quality by citing documented impairments downstream from the Los Alamos County areas proposed for designation. We agree with EPA that New Mexico’s 303d/305b list is an appropriate source for the agency to rely on in confirming that the Los Alamos County discharges are a source of pollution contributing to water quality standards violations.

⁵ Letter from G. Tracy Mehan III, EPA Assistant Administrator, to Elizabeth McLain, Secretary, Vermont Agency of Natural Resources at 2 (Sept. 16, 2003).

⁶ *Id.* at 3.

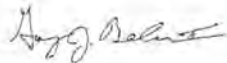
⁷ *In re Stormwater NPDES Petition*, 910 A.2d at 836 n.6.

In conclusion, we support EPA's proposal to exercise its residual designation authority and designate the Los Alamos County discharges for permitting.

Sincerely,



Rebecca Hammer
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RYAN FLYNN
Cabinet Secretary

BUTCH TONGATE
Deputy Secretary

June 15, 2015

Ms. Evelyn Rosborough
Water Quality Protection Division (6WQ-NP)
U. S. Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

Re: MS4 Designation for Los Alamos

Dear Ms. Rosborough:

In response to the United States Environmental Protection Agency's ("EPA") "Notice of Availability of Preliminary Designation of Certain Stormwater Discharges in the State of New Mexico Under the National Pollutant Discharge Elimination System of the Clean Water Act" published in the Federal Register on March 17, 2015, the New Mexico Environment Department ("NMED") provides the following comments.

NMED does not support the proposed small municipal separate storm sewer system ("MS4") designation for Los Alamos at this time. Although designation of the Los Alamos MS4 could provide a mechanism to coordinate efforts to address contaminated stormwater that is responsible for multiple water quality impairments identified on New Mexico's 303d List of Impaired Waters, NMED believes the designation is premature because the designation is not adequately substantiated and may also preempt the State efforts currently underway to address these impairments.

As you are aware, designation of an entity as a MS4, requiring a National Pollutant Discharge Elimination System ("NPDES") permit, occurs by meeting one of the applicability criteria in 40 C.F.R. § 122.26. Most commonly, an entity can be designated a MS4 pursuant to the federal Clean Water Act (33 U.S.C. §§ 1251 to 1388) based on the population of a given area or its designation as an "urban area." In this proposed action the Regional Administrator is utilizing a significantly less common method, known as the "residual designation authority," to designate portions of Los Alamos County ("County"), Los Alamos National Laboratory ("LANL"), and surrounding area as a MS4. This authority requires the Regional Administrator to determine that a discharge, or category of discharges within a geographic area, contribute to a violation of a

water quality standard or is a significant contributor of pollutants to waters of the United States. Because of the substantial implications and significant local stakeholder opposition, NMED believes that an extensive and detailed basis that clearly identifies the criteria used to determine that stormwater discharges from the County or LANL are the cause or are significantly contributing to the exceedances of water quality standards for the areas receiving is necessary. While the rule does not detail any specific requirements or criteria for the Regional Administrator to make the determination and thereby invoke the designation, NMED is concerned that this determination, as detailed below, is not sufficiently supported by the information provided in the Designation Document by EPA and is therefore premature or unfounded.

First, while NMED understands that the Regional Administrator used information from the NMED 303d/305b Integrated report in their Designation Document, it is unclear how carefully this information was considered. While it is true that significant number of waters in Los Alamos County are listed as impaired for one or for contaminants, the most recent EPA approved 303d/305 Integrated Report NMED Surface Water Quality Bureau does not find that stormwater is a source of the contaminants or pollutants; presently the probable source(s) for these listing is identified as "unknown". Perhaps more concerning is the inclusion of the community of White Rock in the Designation Document even as the two receiving waters for stormwater from this community (Canada del Buey and Pajarito Canyon) are not listed as impaired. Surely for these waters EPA cannot find that stormwater discharges are causing or contributing to a water quality impairment. NMED recommends that the EPA Regional Administrator re-evaluate all relevant data sources as part of their determination and use the most recently approved NMED 303d/305b impairment documents.

Second, NMED is also concerned by the Regional Administrator's use of the two LANL reports in making the Designation that stormwater discharges cause or contribute to water quality impairments. The conclusions of these reports have an inherent conflict of interest as they were developed by LANL to demonstrate that stormwater discharges from solid waste management units ("SWMUs") and areas of concerns ("AOCs") regulated under LANL's individual stormwater permit (Permit #NM0030759) were not the cause of water quality impairments. Further these reports have not been vetted or approved by any outside agency, including NMED or EPA. Although LANL has substantial institutional quality control and assurance in their data collection efforts, the ramifications of unverified data analysis and conclusions is so substantial for this situation that an independent review and analysis is critical. NMED recommends that the Regional Administrator conduct an independent receiving water study to determine if stormwater discharges are causing or contributing to receiving water quality exceedances.

Third, the area of the proposed MS4 has a varied geophysical nature, which includes complex geology with a canyon and mesa topography with a mix of residential, commercial and national laboratory facilities. If this Designation is truly based on water quality impairments, then a watershed approach to the designation as opposed to a piecemeal approach based on "urban clusters" and the LANL boundary would be more appropriate. As currently proposed, there are several small excluded areas that are completely surrounded by lands currently proposed for designation. It is unclear what advantage there would be to the MS4 program, or to the

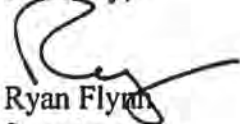
Ms. Evelyn Rosborough
Page 3
June 15, 2015

regulated parties, in excluding these and other small properties within the overall impaired watersheds on which this designation is based. As recently discussed with Region 6 staff, one of the excluded areas is the Royal Crest trailer and RV park on the rim of Sandia Canyon, and another is the Bayo Wastewater Treatment Facility (NM0020141). In addition, several SWMUs and AOCs are outside the Los Alamos County-based MS4 boundary in Santa Fe County. Depending on their current status and level of remediation, coverage of these sites may be warranted. NMED asks that the Regional Administrator provide the specific facts used to make the boundary determination and explain why these areas were not considered.

Finally, as EPA is aware, NMED is currently in the process of drafting Total Maximum Daily Load (TMDL) planning documents as well as working with LANL to develop "4B" TMDL alternatives for many of the waters considered in this Designation. It is through this public process that New Mexico works to identify the "probable source(s)" of impairment and change this from "unknown" to specific sources, potentially including stormwater discharges. Further, through the 4B TMDL alternative NMED works with local stakeholders to identify pollution control measures that are in place such that they are reasonably expected to result in attainment of the water quality standard in the near future. NMED is concerned that this Designation will preempt this on-going State effort. NMED recommends that EPA allow this State effort, working jointly with the potential permittees in this designation, sufficient time to be completed and implemented.

For the reasons described above, NMED believes the MS4 designation for Los Alamos is premature and requests that EPA provide additional detailed and properly vetted information upon which a designation of this type should be based. More specifically, NMED requests that the Regional Administrator provide the specific facts, evidence, and publicly adopted documents used in reaching this designation decision including what standard of proof was applied in review of such data that lead to his decision to regulate stormwater under the residual designation authority of 33 U.S.C. § 1342(p)(2)(E) and 40 C.F.R. § 122.26(a)(9)(i). A designation, if appropriate, should not leave a significant stakeholder such as the County with so many unanswered questions and concerns. Thank you for considering our comments. If you have any questions, please contact me at (505) 827-2855 or via email at ryan.flynn@state.nm.us.

Sincerely,



Ryan Flynn
Secretary

cc: Brent Larsen, USEPA, 6EN-WC, via email
Kevin Powers, Los Alamos County, via email
Paul Kavanaugh, Santa Fe County, via email
Ted Barber and Hashem Faidi, NMDOT, via email
Michael Saladen, LANS, via email
Gene Turner, DOE, via email
Trais Kliphuis, NMED, Water Protection Division Director



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Date: JUN 15 2015
Symbol: ENV-DO-15-0160
LA-UR: LA-UR-15-24376
Locates Action No.: N/A

Ms. Evelyn Rosborough
 Environmental Protection Agency
 Water Quality Protection Division (6WQ-NP)
 1445 Ross Ave., Suite 1200
 Dallas, TX 75202

Dear Ms. Rosborough:

Subject: Comments on Los Alamos National Laboratory (LANL) NPDES MS4 Preliminary Designation

The Department of Energy (DOE) and Los Alamos National Security (LANS) appreciate the opportunity to provide comments on EPA's NPDES Municipal Separate Storm Sewer System (MS4) preliminary designation for Los Alamos National Laboratory (LANL), which was issued on March 17, 2015. The DOE/LANS comments pertain primarily to the preliminary designation boundary for LANL, and comment details are provided in Enclosure 1. Enclosure 2 provides a map identifying a proposed boundary modification. Your review and consideration is appreciated.

Please contact Terrill Lemke of the Environmental Compliance Group (ENV-CP) at (505) 665-2397 or tlemke@lanl.gov if you have any questions or need additional information.

Sincerely,

Alison Dorries
 Division Leader
 Environmental Protection Division
 Los Alamos National Security LLC

AMD:GET/ms

Sincerely,

Gene E. Turner
 Environmental Permitting Manager
 National Security Missions
 Los Alamos Field Office
 U.S. Department of Energy

Ms. Evelyn Rosborough
ENV-DO-15-0160

- 2 -

AMD:GET:TWL/ms

Enclosures: (1) MS4 Preliminary Designation Comments
(2) Proposed LANL MS4 Boundary

Cy: Gene E. Turner, LASO-NS-LP, (E-File)
Kirsten Laskey, LASO-SUP, (E-File)
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Amy E. De Palma, PADOPS, (E-File)
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Enclosure 1 - LANL MS4 Preliminary Designation Comments

The following comments, on behalf of Los Alamos National Security, LLC (LANS) and the United States Department of Energy (DOE), pertain to the boundary identified for Los Alamos National Laboratory (LANL) in the MS4 preliminary designation issued by EPA on March 6, 2015. LANS and DOE do not agree with the proposed boundary in EPA's preliminary designation based on two primary points: 1) The MS4 permit boundary should not encompass all of LANL but should focus on urban areas within LANL, and 2) the MS4 permit boundary should not be based on ensuring inclusion of all the NPDES Individual Permit (IP) (Permit No. NM0030759) sites, which would necessitate the full LANL boundary. Therefore, LANS and DOE have also included a modified boundary proposal to more accurately capture urban areas. Details and justification for these primary points are provided in the sections below.

1. Boundary should focus on urban areas

Both the Amigos Bravos Petition for Determination and EPA's Preliminary Designation Document repeatedly identify urban storm water runoff as the justification for and focus of the MS4 evaluation. Further, regulations requiring MS4 designations and the MS4 permit structure are based on the existence of a population and municipal infrastructure. As evidence of this:

- a. The Amigos Bravos Petition for Determination, submitted to EPA on June 30, 2014, cites urban runoff as the cause for alleged violations of water quality standards. The Petition states, "The data and studies summarized in the Statement of Facts firmly link the water quality impairment downgradient from the Pajarito Plateau to storm water runoff from urban areas". (Section II.B.2, 1st paragraph).
- b. The section of the Petition titled "Statement of Facts" cites a LANL background and baseline concentration study, LANL's self-published Environmental Report, and LANL NPDES IP Alternative Compliance requests as specific examples of exceedances of water quality standards. The cited references in all of these documents pertain to storm water data from urban sources.
- c. The Petition specifically calls out urban impacts to Los Alamos, Sandia, Mortandad, Pajarito and Pueblo Canyons (Section II.B 2). All five of these canyons receive substantial storm water runoff from urban areas.
- d. EPA's Preliminary Designation Document states, "The Petition alleges that urban storm water pollution from Los Alamos County sites, particularly urban storm water runoff from developed areas at Los Alamos National Laboratory (LANL),...is contributing to violations of New Mexico state water quality standards". (Section I, 2nd paragraph, 1st sentence)
- e. EPA's Preliminary Designation Document states, "Discharges from MS4s are comprised primarily of urban storm water". (Section II, C, 1st sentence)
- f. Each regulation relating to a requirement to obtain an MS4 permit has an express nexus to population numbers, urban areas, urban clusters and census data. Phase I of the storm water rule defined large and medium MS4s based solely on the number of people within an

incorporated place or specified areas by name based on population. 40 C.F.R. § 122.26(b)(4) and (7). The Phase II rule automatically designated all MS4s located within urbanized areas as regulated MS4s. 40 C.F.R. § 122.32(a)(1). The rule further instructs permitting authorities to develop criteria to evaluate whether small MS4s outside of urbanized areas should be designated as regulated MS4s and to apply that criterion to small MS4s with a population density of at least 1,000 people per square mile and population of at least 10,000. 40 C.F.R. § 123.35(b). None of these regulations provide for or require MS4 coverage of large areas of undeveloped land.

- g. MS4 permits are not structured to regulate unpopulated, undeveloped land. Rather, each of the six MS4 minimum control measures involve public outreach and involvement and assume the existence of urban infrastructure that includes materials and surfaces that may contribute pollutants to storm water runoff. Absent a population with which to engage, or any storm water systems to protect or improve, there is no justification to regulate large, undeveloped areas of LANL. Including such areas within the MS4 boundary would likely lead to confusing, unnecessary and unforeseen compliance issues.
- h. EPA in its preliminary designation rejected the alternative of designating all MS4s in the entire Los Alamos County due to the unintended consequence of including municipal storm sewers operated by the National Park Service, Los Alamos County and NMDOT in rural areas of the county without information to evaluate contribution to water quality impairments above background levels. This determination is inconsistent with the inclusion of similarly situated LANL areas and is inconsistent with how MS4 boundaries are established in Phase II urbanized areas (see, e.g., Kirtland Air Force Base – Small MS4 NOI)

The majority of the area within the LANL boundary is undeveloped. Of the approximately 39 mi² area within LANL, less than 5% (1.62 mi²) is urban (buildings, roads, parking lots). Therefore, since the MS4 designation is based on impacts of urban storm water runoff, the boundary should be focused on capturing urban areas and not all locations within LANL.

2. Designation should not focus on IP Sites

In conversation with EPA personnel, it was stated that the MS4 boundary for LANL was drawn to assure inclusion of all 405 NPDES Individual Permit Sites. The Permittees maintain, for the following reasons, that this is not an appropriate criterion for the MS4 boundary designation.

- a. IP Sites are currently regulated under a rigorous NPDES permit (Permit No. NM0030759) which includes requirements for long-term management of Sites. Establishing an MS4 boundary for no other reason than to ensure inclusion of these Sites would appear to be unauthorized and unnecessary dual regulation.
- b. Urban run-on is not an issue for most Sites. Only 58 of 405 Sites (14%) have documented urban/developed area run-on issues.

- c. The IP Alternative Compliance Requests submitted by LANS and DOE to EPA stating that Target Action Level exceedances are likely from sources other than the Site (urban storm water runoff) only identify this condition at some Sites. There has been no assertion made by LANS and DOE that this condition will occur at all IP Sites.
- d. 149 IP Sites (37%) have not sampled in over 5 years of monitoring. Most if not all of these sites did not discharge during the 1000-year flood event in 2013 (a limited number may have discharged but may not have been sampled as a result of equipment failure).
- e. Many IP Sites are located in non-urban areas and are not associated with a conveyance that could be considered an MS4, or do not discharge to a waters of the US. These Sites would therefore not be incorporated into requirements of an MS4 permit but would nonetheless be within the MS4 boundary proposed by EPA.

Again, LANS and DOE maintain that any MS4 permit should focus on management of storm water runoff in urban areas. IP Sites that are located within urban landscapes would be incorporated into this management structure, just as NPDES permitted facilities are incorporated into MS4s nationwide. However, additional regulation is not needed to successfully manage IP Sites outside urban areas and would lead to uncertainty regarding applicable requirements.

3. Proposed boundary

LANS and DOE propose that the most appropriate and representative LANL designation/boundary for the MS4 permit would be all areas of LANL located immediately adjacent to and north of Pajarito Road. Pajarito Road extends northwest from State Road 4, adjacent to the community of White Rock, to Technical Area 3, which is the largest urbanized portion of LANL (see Enclosure 2 for details). Areas adjacent to and north of Pajarito Road would capture the majority of LANL urbanized areas including TA-03, TA-60, TA-55, TA-54, TA-53 and TA-46. This proposed boundary would address in urban runoff to Los Alamos, DP, Sandia, Mortandad, Pajarito, and Canada del Buey drainages. There are no LANL/DOE urban areas that drain to Pueblo Canyon. In addition to MS4 coverage, designated point sources within these urban areas, as well as outside of those areas, are managed through four other established NPDES permit programs (Construction General Permit, Multi-Sector General Permit, Storm Water Individual Permit, Industrial and Sanitary Outfall).

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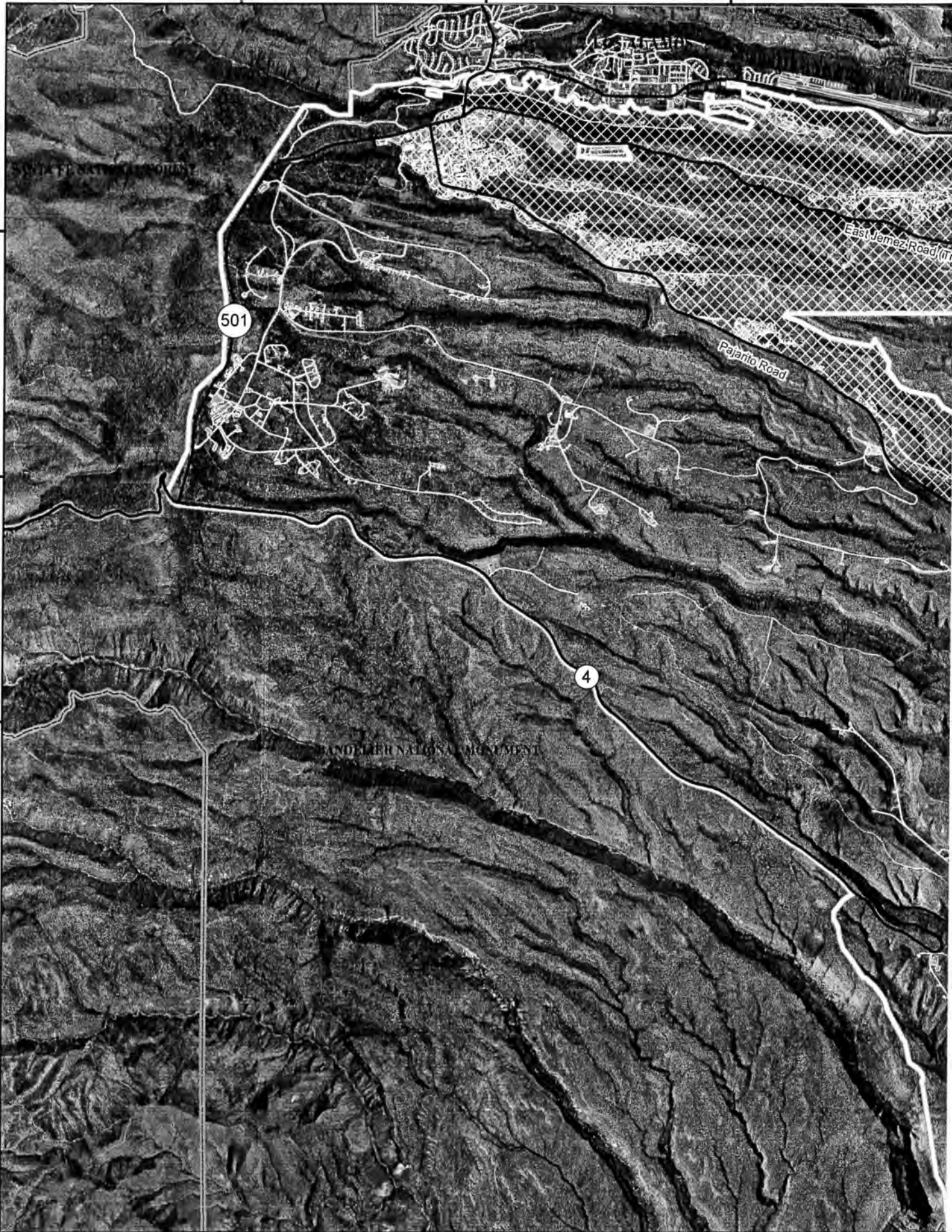
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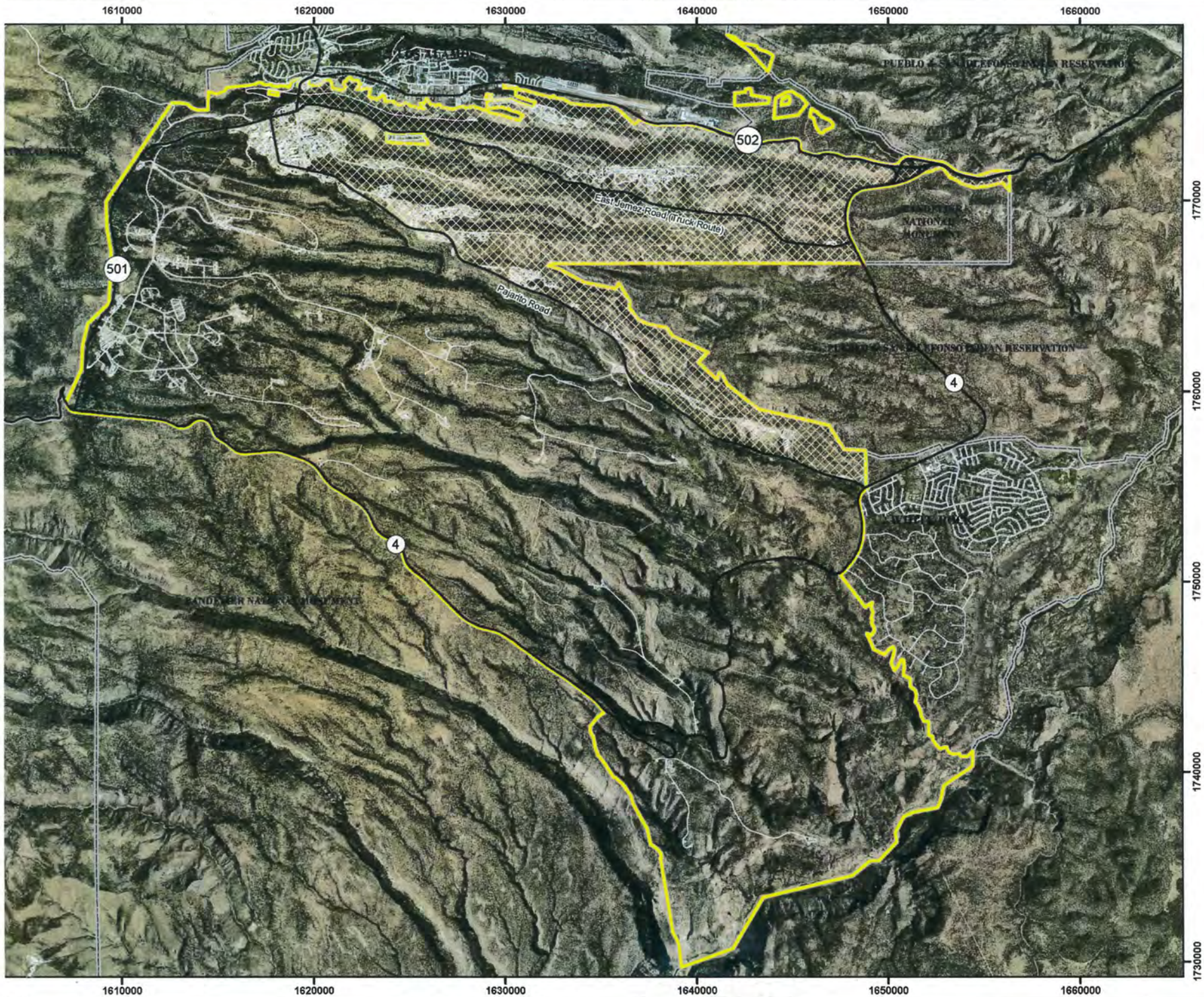
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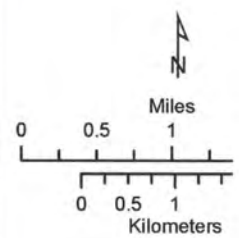
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Proposed L MS4 Bound

-  Major road
-  Minor road
-  Proposed MS4
-  Land owners



State Plane Coordinate System
 New Mexico, Central Zone, US Feet
 NAD 1983 Datum

This map was created for work processes as with the MS4 Permit. All other uses for this map should be confirmed with LANL ENR.

Map #15-0042-01, Created by Brad McKown



LOS ALAMOS COUNTY

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Nasim

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COUNTY MANAGER
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PLANNING & DEVELOPMENT
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April 2, 2015

Via Email and U.S. Mail

Mr. Samuel Coleman, P.E.
Acting Regional Administrator, Region 6
U.S. Environmental Protection Agency
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Dallas, Texas 75202
Email: coleman.sam@epa.gov

Ms. Evelyn Rosborough
U.S. Environmental Protection Agency
Water Quality Protection Division (6WQ-NP)
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202
Email: rosborough.evelyn@epa.gov

Re: Request for additional time for comment period from the Incorporated County of Los Alamos Notice of Availability of Preliminary Designation of Certain Stormwater Discharges in the State of New Mexico under the National Pollutant Discharge Elimination System of the Clean Water Act [FRL-9924-58-REGION-6]; 51 Fed. Reg. 13,852 (March 17, 2015)

Dear Mr. Coleman and Mrs. Rosborough:

The Incorporated County of Los Alamos ("County") hereby requests that the U.S. Environmental Protection Agency, Water Quality Protection Division (6WQ-NP) ("Agency") extend the deadline for submittal of public comment for the above referenced matter for an additional sixty (60) days to allow the County time to investigate, discuss, prepare, and submit comments. As discussed below, this additional time is necessary to ensure that the County has the time to process the proposed designation, understand, and is able to address the numerous technical and financial issues arising from the possible designation of the County ("Designation") as a small municipal separate storm sewer system ("MS4") pursuant to 40 C.F.R. §122(a)(9)(i), and the relationship of this preliminary designation to historic federal activities in the affected region.

As you may know the Federal Register notice provided for a 30-day comment period. Although the County, as one of the three primary impacted public agencies, has communicated about water issues with Agency staff, the County was shocked by the first of its kind proposed Designation in Region 6 that, if implemented, could significantly impact the citizens of our community. It was the County's prior understanding that if the Designation was to occur, the County and other parties would be covered by the State's small MS4 general permit, however, in recent communication with Agency staff, it was stated

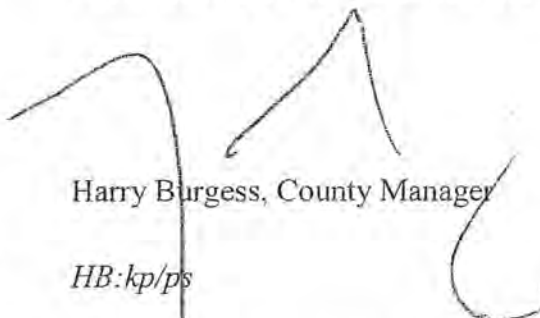
that the County would receive a general MS4 permit specific to Los Alamos and akin to the Albuquerque MS4 permit. This Designation seems to be unfairly targeting our small residential community, especially when the Agency and the New Mexico Environment Department are trying to address cleanup and water issues at Los Alamos National Laboratory ("LANL") with the U.S. Department of Energy and the National Nuclear Security Administration. In fact, this seems to be in direct conflict with EPA's policy on community engagement, as evidenced by the absence of advance notice or discussion with the County, notwithstanding the potentially large financial impact on the community.

One of the more important aspects that must be investigated by the County before proceeding is the extent of the boundaries of the proposed MS4 area. The County needs to identify, in coordination with the LANL and the New Mexico Department of Transportation, using geographical information systems, the mutual and/or adjacent areas of responsibility. The County also needs added time to assess the influence that historical legacy clean-up areas will have on final permit requirements, including known and unknown areas designated as Solid Waste Management Units and Areas of Concern, as well as the numerous LANL sites that have an already issued Industrial Stormwater Permit. These LANL areas are located within and outside County borders, and will have serious implications for the area(s) of responsibility.

Finally, the County needs the requested time so that it can gather appropriate data as well as other information that will enable staff to both advise and seek guidance from the Governing Body as to the best way for the County to respond to the Determination.

If you have additional questions, comments, or concerns, I am happy to discuss this request with you or Agency staff at your convenience. Please feel free to contact me at (505) 662-1750 or Mr. Philo Shelton, the County's Public Works Director, at (505) 662-8150.

Yours truly,
INCORPORATED COUNTY OF LOS ALAMOS


Harry Burgess, County Manager

HB:kp/ps

- cc: Kristin Henderson, Chair, Los Alamos County Council (email only)
Brian Bosshardt, Deputy County Manager, Los Alamos County (email only)
Philo Shelton, Public Works Director, Los Alamos County(email only)
Rebecca Ehler, County Attorney, Los Alamos County(email only)
Bryan Aragon, Public Works, Los Alamos County(email only)

Christine Gelles, Department of Energy (*email only*)

Kimberly Lebak, Department of Energy/NNSA (*email only*)

Terrill Lemke, Los Alamos National Laboratory (*email only*)

Tim Dolan, Los Alamos National Laboratory (*email only*)

Lisa Cummings, Department of Energy/NNSA (*email only*)

Gene Turner, Department of Energy/NNSA (*email only*)

Ryan Flynn, Secretary, New Mexico Environment Department (*email only*)

Miguel Gabaldon, District 5 Engineer, New Mexico Department of Transportation (*email only*)

Hashem Faidi, Drainage Design Bureau, New Mexico Department of Transportation (*email only*)



LOS ALAMOS COUNTY

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Susan O'Leary
Rick Reiss
Pete Sheehey

COUNTY MANAGER
Harry Burgess

June 15, 2015

Via U.S. Mail and Email

Mr. Samuel Coleman, P.E.
Acting Regional Administrator
U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202

Ms. Evelyn Rosborough
U.S. Environmental Protection Agency
Water Quality Protection Division (6WQ-NP)
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202
Email: rosborough.evelyn@epa.gov

Re: Incorporated County of Los Alamos Comments to Notice of Availability of Preliminary Designation of Certain Stormwater Discharges in the State of New Mexico under the National Pollutant Discharge Elimination System of the Clean Water Act [FRL-9924-58-REGION-6]

Dear Ms. Rosborough:

The Incorporated County of Los Alamos ("County") appreciates the opportunity to submit the attached public comment to the above referenced action by your agency, the Region 6 of the U.S. Environmental Protection Agency ("EPA"). The attached public comment relates to preliminary designation of the County as a small municipal separate storm sewer system ("MS4"). The County is grateful for the additional time to investigate and comment on the proposed designation and appreciates this opportunity to work collectively with the EPA in protection of the County's, State's, and nation's waters.

As demonstrated in the enclosed comment, the County asserts that the preliminary designation is arbitrary and erroneous as at no time has EPA demonstrated that the County conclusively "contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States" upon which this preliminary determination is based. *See* 40 C.F.R. 122.26(a)(9)(i)(D). Further, the preliminary designation by EPA (the United States government) attempts to shift the burden

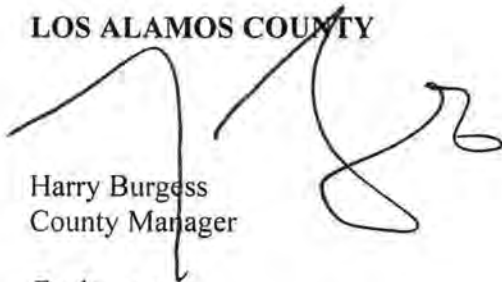
of environmental remediation of historical contamination from the responsible party, U.S. Department of Energy/National Nuclear Security Agency (also the United States government), to the County.

The County supports the comments of the other potential parties to the proceeding, including, Los Alamos National Laboratory, the U.S. Department of Energy, National Nuclear Security Agency, and the New Mexico Department of Transportation. In submitting this comment, the County reserves all defenses, arguments, and rights related to further proceedings in this matter.

The County looks forward to discussing the attached comments with you or your staff. Please feel free to contact me at your convenience.

Yours truly,

LOS ALAMOS COUNTY

A handwritten signature in black ink, appearing to read 'Harry Burgess', is written over the printed name and title. The signature is fluid and cursive, with a large initial 'H' and 'B'.

Harry Burgess
County Manager

Enclosures

cc: Kristin Henderson, Chair, Los Alamos County Council (*email only*)
Brian Bosshardt, Deputy County Manager, Los Alamos County (*email only*)
Philo Shelton, Public Works Director, Los Alamos County (*email only*)
Rebecca Ehler, County Attorney, Los Alamos County (*email only*)
Kevin Powers, Assoc. County Attorney, Los Alamos County (*email only*)
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Lisa Cummings, Department of Energy/NNSA (*email only*)
Gene Turner, Department of Energy/NNSA (*email only*)
Ryan Flynn, Secretary, New Mexico Environment Department (*email only*)
Trais Kliphuis, Division Director, New Mexico Environment (*email only*)
Miguel Gabaldon, District 5 Engineer, New Mexico Department of Transportation (*email only*)
Hashem Faidi, Drainage Design Bureau, New Mexico Department of Transportation (*email only*)
Ted Barber, Bureau Manager, New Mexico Department of Transportation (*email only*)

**Incorporated County of Los Alamos Comments to
Notice of Availability of Preliminary Designation of Certain Stormwater
Discharges in the State of New Mexico under the National Pollutant Discharge
Elimination System of the Clean Water Act
[FRL-9924-58-REGION-6]
80 Fed. Reg. 13,852 (March 17, 2015)**



Prepared by the
Incorporated County of Los Alamos, New Mexico
*Through the County Manger's Office, Public Works Department,
and County Attorney's Office*

June 15, 2015

Incorporated County of Los Alamos Comments to Notice of Availability of Preliminary Designation of Certain Stormwater Discharges in the State of New Mexico under the National Pollutant Discharge Elimination System of the Clean Water Act [FRL-9924-58-REGION-6]

Table of Contents

I.	U.S. EPA, Region 6 Preliminary Designation of Los Alamos County as a Small MS4.....	1
A.	Los Alamos does not meet the designation requirements of 40 C.F.R. § 122.26(a)(9)(i).	1
B.	Los Alamos County is not an “Urbanized Area.”	2
C.	No Total Maximum Daily Loads (TMDLs) apply or are effective within Los Alamos County.....	4
D.	Los Alamos County does not Cause or Contribute to Exceedances of Water Quality Standards.....	4
1.	<i>The EPA Regional Administrator Fails to Use the NMED 303d/305b Reports to Establish Cause of Water Quality Exceedances.</i>	<i>4</i>
2.	<i>Use of 3rd Party Unproved Data over NMED and EPA Approved and Accepted Data.....</i>	<i>6</i>
a.	<i>EPA Regional Administrator uses the LANL PCB Report to Find the County as the Cause of PCB Exceedances.</i>	<i>6</i>
b.	<i>EPA Regional Administrator’s use of LANL’s “Background Metals Concentrations and Radioactivity in Storm Water on the Pajarito Plateau, Northern New Mexico” Report to find Cause.</i>	<i>7</i>
3.	<i>Use of the Factors in 40 C.F.R. § 123.35(b) by the Regional Administrator is Inappropriate.....</i>	<i>8</i>
II.	Los Alamos County does not discharge to waters of the United States.....	8
III.	Conclusions	9

Incorporated County of Los Alamos Comments to Notice of Availability of Preliminary Designation of Certain Stormwater Discharges in the State of New Mexico under the National Pollutant Discharge Elimination System of the Clean Water Act

The Incorporated County of Los Alamos (“County”) hereby submits the following public comment as related to the U.S. Environmental Protection Agency’s (“EPA”), Region 6, publication of its notice in the Federal Register on March 17, 2015, titled “*Notice of Availability of Preliminary Designation of Certain Stormwater Discharges in the State of New Mexico under the National Pollutant Discharge Elimination System of the Clean Water Act.*” Federal Register, Vol. 80, No. 51. The preliminary designation by Acting Region 6 Administrator, Samuel Coleman, P.E. (“Regional Administrator”), suggests that the County, among others, is a small Municipal Separate Storm Sewer System (“MS4”) and requires a MS4 permit.¹ The County contends, as will be shown below, that the preliminary designation is erroneous, arbitrary, and is not supported by the facts. As such, the County request that the Regional Administrator withdraw his proposed and preliminary designation of the County as a MS4 and instead focus on the improvement of area water quality improvement through existing regulatory permitting actions, including the renewal of the industrial permit, already issued to parties in the area.

I. U.S. EPA, Region 6 Preliminary Designation of Los Alamos County as a Small MS4.

A. Los Alamos does not meet the designation requirements of 40 C.F.R. § 122.26(a)(9)(i).

Designation of an entity as a MS4, thus requiring a National Pollutant Discharge Elimination System (“NPDES”) permit, can occur in several different ways. First, and most commonly, an entity can be designated a MS4 pursuant to the federal Clean Water Act (33 U.S.C. §§ 1251 to 1388), and its ensuing regulations known as the “Phase I” and “Phase II” stormwater rules. The Phase I and II MS4 designations are based strictly on the population of a given area or its designation as an “urban area.” See 33 U.S.C. § 1342(p)(2)(A)-(E); see also 40 C.F.R. § 122.26(a)(9)(i)(A), 40 C.F.R. § 122.32(a)(1). An extremely rare and less common means to designate an entity as a MS4 is by petition to the Regional Administrator for MS4 coverage. See 40 C.F.R. § 122.26(a)(9)(i)(D). This second method is commonly called EPA’s “residual designation” authority. It is through this federal code provision and rule that the Regional Administrator now attempts to assert jurisdiction over the County and surrounding area; it is the exception, not the rule that is being applied.

The Regional Administrator, in his document titled “Los Alamos County Preliminary Designation Document” (“Designation Document”), dated March 6, 2015, suggests that, based on the criteria in 33 U.S.C. § 1342(p)(2)(E), 40 C.F.R. § 122.2(a)(9)(i), 40 C.F.R. § 122.32(a), and two reports prepared by Los Alamos National Laboratory (“LANL”), the County is causing and contributing to water quality exceedances and thus must be regulated as a small MS4. The County requests that the Regional Administrator reconsider this preliminary determination because the facts and underlying data, to be discussed below, do not support any rational finding or conclusion that the County “contributes to a

¹ 40 C.F.R. § 122.26(b)(16), (17), and (19).

violation of a water quality standard or is a significant contributor of pollutants to waters of the United States” as required by 40 C.F.R. § 122.26(a)(9)(i). The County asserts this position because:

- The County’s stormwater drainage system is not located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census;
- The Regional Administrator has not shown or adequately demonstrated that stormwater controls are needed for County stormwater discharges to waters of the United States with a validly issued state total maximum daily loads (“TMDL”); *and most importantly*
- The Regional Administrator has not factually or conclusively shown or demonstrated that discharges from the County “contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.”² Such is a predicate to assertion of regulatory authority.
- Any actual contamination reported in the reports is caused by the current and past activities of the United States which has been cleaning up areas since 1950 and would shift the burden of environmental remediation from the responsible party, U.S. Department of Energy/National Nuclear Security Agency (the United States government), to the County.³

Without a rational and supportive basis that clearly identifies and finds that the County is the cause or is “significantly” contributing to the exceedances of the areas receiving waters and waters of the United States, the Regional Administrator’s proposed designation is in error. The County requests that the Regional Administrator specify and provide to the County the specific facts, evidence, or publicly adopted documents he used in reaching his designation decision including what standard of proof he applied in review of such data that lead to his preliminary decision to regulate the County under the residual designation rule of 33 U.S.C. § 1342(p)(2)(E) and 40 C.F.R. § 122.26(a)(9)(i).

B. Los Alamos County is not an “Urbanized Area.”

Title 40, Chapter 1, Part 122.26 of the code of federal regulations provides that discharges composed of entirely stormwater, that are not regulated by the Phase I stormwater regulations, would be required to obtain a NPDES Stormwater permit if: (1) the discharge is from a small MS4 required to be regulated by 40 C.F.R. § 123.32⁴; (2) were a small construction activity; (3) is found that stormwater controls were needed to meet wasteload allocations of total maximum daily loads; or (4) the entity is found to be

² The County contends these statements and basis of regulation are contrary to the federal requirement that the County’s discharges must be shown to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States, *not simply likely to contribute to water quality impairments*. See e.g., *Los Alamos County Preliminary Designation Document*, page 9 (issued 3/6/2015)(“Based on the agency’s independent review of all available information, EPA finds that available information indicates the presence of pollutants **associated** with impairment in storm water discharges from MS4s on LANL property and urban portions of Los Alamos County. EPA further concludes these discharges **may be** causing or contributing to the impairments listed by the state.”(emphasis added)). This is far from a clear and unequivocal finding.

³ Since its inception in 1943 as part of the Manhattan Project, LANL’s primary mission has been nuclear weapons research and development. The LANL EM Program mission is to safely secure and to achieve cleanup and risk reduction of legacy material, facilities, and waste sites at LANL in support of DOE’s Strategic Plan to safely complete the environmental remediation of legacy and active sites while protecting human health and the environment. Since October 1, 1988, the programs that characterize and remediate contaminants in the environment, decontaminate and decommission (D&D) process-contaminated facilities, and manage and dispose of legacy transuranic (TRU) waste have been funded by DOE EM. Thousands of pages of cleanup information is available at <http://epr.lanl.gov/oppie/service>.

⁴ 40 C.F.R. § 122.32 provides that an entity is a small MS4 requirements where “(1) Your small MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census. (If your small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated); or (2) You are designated by the NPDES permitting authority, including where the designation is pursuant to §§ 123.35(b)(3) and (b)(4) of this chapter, or is based upon a petition under § 122.26(f).” 40 C.F.R. § 122.32(a)(1)-(4).

contributing to a violation of a water quality standard or is a “significant contributor of pollutants to waters of the United States. 40 C.F.R. § 122.26(a)(9)(i). Under 40 C.F.R. § 122.32(a), an entity is subject to regulation as a small MS4 if it is found that its system is “located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census.” 40 C.F.R. § 122.32(a)(1)(*emphasis added*). If only a portion of your system is in the urbanized area, only that part is or will be regulated. *Id.* (*emphasis added*). Note however that 40 C.F.R. § 122.32(a)(1) does not include the term “urbanized cluster” to establish jurisdiction; it mandates that EPA exclusively use “urbanized area”. *See* 40 C.F.R. § 122.32(a)(1). Areas not an urbanized area or within the area designated as one, are by the plain meaning excluded. *Id.*

The U.S. Census Bureau defines an “urbanized area” or “UA”, as an area with 50,000 or more population.⁵ The Census Bureau, in the 2010 listing of urbanized areas, lists “Los Alamos, NM” as having a population of only 10,893 people.⁶ In several parts of the Designation Document, the Regional Administrator states the Los Alamos townsite is an “urbanized area” and although the Regional Administrator later posits that population and density were not entirely considered in his proposed designation, the County would nonetheless request that the Regional Administrator correct the inaccurate assessment that the County is an “urbanized area” pursuant to the U.S. Census Bureau definition.⁷

The County would additionally request that the Regional Administrator discuss in response to this comment his inclusion and consideration of “urban clusters” in reaching his decision to regulate and proposed areas of regulation under 40 C.F.R. § 122.26(a)(9)(i)(A) and 40 C.F.R. § 122.32(a)(1). The regulations clearly require that the Regional Administrator only consider whether the “MS4 [or portion thereof] is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census.” 40 C.F.R. § 122.32(a)(1). The County was unable to find any rule, regulation, case, or part of the Clean Water Act that allows regulation of the County as a MS4 based on an “urbanized cluster,” by general land area, or by population density. As provided in the Designation Document and by the Regional Administrator’s map showing the areas proposed for regulation, it appears that the Regional Administrator uses and considers urban clusters and population density to draw the proposed border of the County’s MS4. The County would appreciate clarification on how the Regional Administrator applied these matters consistently to federal laws and regulations.

Additionally, attached hereto as **Exhibit A** is a listing of the top 25 most populated New Mexico cities as found by the 2010 U.S. Census Bureau. The County is generally concerned that we are being included as a municipal type entity with certain discrete stormwater conveyances *and borders*, whereas the County has only a two small areas of municipal type of impervious area. The vast majority and remainder of land area is generally pervious, and includes in vast majority DOE/LANL areas, U.S. Forest Service/National Park Service areas, and general wild land and open space. The County would appreciate the Regional Administrator’s identification of those cities that are currently covered by an existing MS4 permit, those that are currently being reviewed for coverage under a MS4 permit, those that have a draft permit, those that have sought coverage via a Notice of Intent or application, and those without a MS4 permit but that meets the Phase I or Phase II MS4 size requirements of 40 C.F.R. § 123.32 or 40 C.F.R. § 122.26(a)(9)(i). The County would appreciate the Regional Administrator’s listing and discussion of those cities that have, in their jurisdictional area, an issued and effective New Mexico

⁵ *See* <http://www.census.gov/geo/reference/ua/urban-rural-2010.html>.

⁶ *See* footnote 6, *infra*.

⁷ The County initially provided it had a population of only 17,798, however using the most recent U.S. Census Bureau published data (2010), the County’s regulatory population is 10,893. Note however that different U.S. Census Bureau data shows the Los Alamos townsite with 12,019 total population and the White Rock townsite with 5,725 total population. *See* <http://quickfacts.census.gov/qfd/states/35/3542320.html> and <http://quickfacts.census.gov/qfd/states/35/3584740.html>. Last visited May 12, 1015.

Environment Department (“NMED”) TMDL. The County would appreciate the Regional Administrator’s explanation on why the County is or may be regulated before other entities that either currently meet the MS4 Phase II size requirements and/or which may have existing NMED TMDLs. Here the County believes that the Regional Administrator has selectively enforced the stormwater regulations against the County and is inconsistently applying such regulations more suited to other areas.

C. No Total Maximum Daily Loads (TMDLs) apply or are effective within Los Alamos County.

Another means to which the Regional Administrator can assert MS4 jurisdiction is where stormwater controls are necessary to meet wasteload allocations that are part of TMDLs that address the pollutant(s) of concern. 40 C.F.R. § 122.26(a)(9)(i)(C). The Regional Administrator, in his Designation Document, does not cite, list, or provide any local area TMDLs that would necessitate the installation of stormwater controls within the County. Thus it would appear that the Regional Administrator cannot designate the County as a MS4 pursuant to this part of the code (40 C.F.R. § 122.26(a)(9)(i)(C)). The County would appreciate clarification that the Regional Administrator did not consider likely or future TMDLs in his consideration and proposed designation.

D. Los Alamos County does not Cause or Contribute to Exceedances of Water Quality Standards.

The Regional Administrator’s main basis and assertion of jurisdiction, as discussed in the Designation Document, seems to rest entirely on 40 C.F.R. § 122.26(a)(9)(i)(D). This code section, part, and clause requires the Regional Administrator find that the County “contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.”⁸ Therefore, for the Regional Administrator to find that the County should be designated as a small MS4, he would must show that the County is causing or contributing to receiving water quality impairments. Attached hereto as **Exhibit B** is a summary of NMED’s 2014-2016 303d/305b Integrated Water Quality Impairment listing.⁹

1. The EPA Regional Administrator Fails to Use the NMED 303d/305b Reports to Establish Cause of Water Quality Exceedances.

In his Designation Document, the EPA Regional Administrator finds that,

“[a]fter analysis of the Petition, the additional information provided by LANL and Los Alamos County and of the State of New Mexico's assessment of water quality in the area, EPA Region 6 has determined the available data *indicates* that storm water discharges from MS4s on LANL property and urban portions of Los Alamos County contribute to violations of water quality standards *or have the potential to* result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. As a result, Region 6 has made a preliminary Designation to designate these storm water discharges as needing NPDES permit coverage pursuant to 40 CFR § 122.26(a)(9)(i)(A), 40 CFR 122.26(a)(9)(i)(D), and 122.32(a)(2).”

Designation Document, Section IV., page 10 (*emphasis added*). From this statement, it is clear that the EPA Regional Administrator only finds that there is some indication of cause as well as the finding that the County may have the potential to result in exceedances of water quality standards. The Regional Administrator then reviews and asserts that water quality in Los Alamos Canyon, Sandia Canyon, Mortandad Canyon, Pajarito Canyon, Canada del Buey, Pueblo Canyon, and a segment of the Rio Grande River between the Cochiti Reservoir to San Ildefonso Pueblo boundary has levels of pollutants

⁸ 40 C.F.R. § 122.26(a)(9)(i)(D).

⁹ Available from the NMED website at <http://www.nmenv.state.nm.us/swqb/303d-305b/>. Last visited May 12, 2015.

far exceeding the State's water quality standards. *Id.* Of these he notes, only the area in and around Pueblo Canyon was noted as being within the jurisdiction of the County. *See Designation Document*, pages 6-7. The Regional Administrator then states that the remainder of the impairments seemed to occur from discharges in and around LANL property. *Id.* In both instances, the County is greatly concerned that neither statement is a conclusive determination or a factual finding of causation/contribution, as required by the Code of Federal Regulations; specifically that it is in fact the County that is contributing to violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.¹⁰

The County is also concerned that the Regional Administrator improperly uses, in his Designation Document, and his subsequent assessment and determination, information from the 2012-2014 NMED 303d/305b Integrated report ("2012-2014 report") verses that information contained in the most recently EPA approved 303d/305 Integrated report, the NMED 2014-2016 303d/305b Report ("2014-2016 report").¹¹ It is important to note however that in both the 2012-2014 and 2014-2016 reports, and contrary to the Regional Administrator's later findings, the NMED Surface Water Quality Division *does not indicate that the County is the source or even potential source of the contaminants or pollutants.* *Designation Document*, Section III. B., page 7 ("Atmospheric deposition - toxics, inappropriate waste disposal, natural sources, watershed runoff following forest fire, post-development erosion and sedimentation and source unknown were listed as sources of impairment in the 2012-2014 303d/305b Report. However, in the 2014-2016 NMED 303d/305b Report, the NMED Surface Water Quality Bureau ("SWQB") removed previously reported probable source lists from the 2014-2016 NMED 303d/305b report and they are replaced with 'Source Unknown'").

The County would appreciate clarification on why the Regional Administrator fails to use the most recently EPA approved and publicly adopted NMED 303d/305b Report, or at least the prior EPA approved 303d report, both of which have been publicly issued, received public comment and input, and was adopted at a public hearing, instead of the two third-party (LANL) non-publicly adopted documents. It is only from such public processes of comment and hearing that such documents can be assured of fairness and a provision of procedural due process in their application. Facially, it appears that the EPA Regional Administrator dismisses the NMED identification of the potential sources of water quality problems as "unknown" and favors secondary and unverified data sources to support his conclusion that it is the County that is the cause or contributor to exceedances of area water quality standards. Further, the Regional Administrator seems to ignore the clear and causal linkage between the NMED reported downstream water quality impairments (*e.g.*, polychlorinated biphenyls ("PCBs"), gross-alpha, zinc, aluminum, mercury, nickel, copper, *etc.*) to the numerous and reported LANL Industrial Site ("IP") Technical Action Levels ("TALs") runoff samples and test results. For example site monitoring area "R-SMA-1" which shows that stormwater discharges on July 2, 2011 and August 9, 2011 that the site had TAL exceedances of 2010 ug/L of aluminum, 45.3 ug/L of zinc, and gross-alpha results of 21.1 and 51.1 pCi/L-all which are above the state water quality standards. Armed with such uncontroverted evidence that LANL's legacy waste is the most likely source and is contributing to exceedances of water quality standards, blame assessed to County operations and areas is misplaced and unfounded. See **Exhibit C** for a map of the Los Alamos Townsite and DOE/LANL identified Potential Release Sites, solid waste management units and the site monitoring areas.

¹⁰ *See e.g.*, 63 Fed. Reg. 1536, 1589 (January 9, 1998)("The standard for designation would be the same as under the existing NPDES regulations for storm water. Individual sources would be subject to regulation *if EPA...determines* that the storm water discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States." (*emphasis added*))

¹¹ *See Designation Document*, Section III. B., page 7.

In the absence of clear evidence that the County is contributing to the violation of water quality standards or is significantly contributing to discharge of pollutants to waters of the United States, the basis of the Regional Administrator's decision is unknown. The County recommends that the EPA Regional Administrator re-evaluate the relevant data sources and use the most recently approved NMED 303d/305b impairment documents, or in the alternative conduct his own environmental receiving water study (using publicly adopted procedures and methods) to determine if the County is the actual cause or contributing to receiving water quality exceedances. The County would additionally appreciate and welcome a clear and concise explanation of the relation of downstream water quality violations/impairments to the runoff from various LANL IP and other legacy waste sites, including whether such impairments of water quality exceedances are in fact be due to pre-LANL IP site runoff control installations.

2. *Use of 3rd Party Unproved Data over NMED and EPA Approved and Accepted Data.*

The County is gravely concerned over the Regional Administrator's use of the two LANL reports in reaching and making his Designation that it is the County that is the cause of PCB and water quality impairments. In review of the two LANL documents used by the Regional Administrator, the County has several important concerns that it anticipates that the Regional Administrator will address in his response to this comment. The first issue centers on the Regional Administrator's use of LANL's PCB report as his basis for finding that it is the County that is the source of PCB water quality exceedances. Secondly, the County is concerned that the Regional Administrator inaccurately uses LANL's metals baseline report to find that the County is the cause of metal (aluminum, copper, gross alpha, mercury, nickel, etc.) water quality exceedances.

a. *EPA Regional Administrator uses the LANL PCB Report to Find the County as the Cause of PCB Exceedances.*

The County is concerned that the Regional Administrator incorrectly uses LANL's PCB report titled "*Polychlorinated Biphenyls in Precipitation and Stormwater within the Upper Rio Grande Watershed*" ("PCB Report") to assess, assign, and determine the cause of receiving water quality impairments. Contrary to the EPA Regional Administrator's findings, the stated purpose of this report was not to determine the sources of PCB discharges, but was to only set a baseline value for local area PCB levels. Nevertheless, the County believes that the PCB water quality exceedances are in fact legacy contaminants that are not due to County operations or existence. In LANL's PCB Report even the author notes that the EPA itself finds that *the major source of PCB contamination worldwide is the environmental cycling of past releases of PCBs.*¹² The LANL PCB Report also provides that,

"[w]et and dry atmospheric deposition provides a continual, but diffuse, source of PCBs to the landscape. Some fraction of these deposited PCBs will be transported directly by stormwater runoff or snowmelt into watercourses. Yet other PCB fractions will volatilize and return to the atmosphere. Meanwhile, a fraction of the PCBs binds to surface soils and is present long-term, forming a reservoir. The surface soil compartment can contain a relatively large mass of atmospheric PCBs because intact soil can collect and integrate decades' worth of PCB deposition."

LANL's PCB Report, page 25. From these findings, it is entirely unclear how the Regional Administrator can reasonably or rationally conclude that the County contributes to a violation of PCB water quality standards. To the extent that the County once had PCB concerns, *i.e.*, County maintenance yard, it has been removed and remediated. In fact this site is now a central part of the community,

¹² See LANL PCB Report, Introduction, page 1 (emphasis added); see also "*Technical Factsheet on: POLYCHLORINATED BIPHENYLS (PCBs)*." Available at <http://www.epa.gov/ogwdw/pdfs/factsheets/soc/tech/pcbs.pdf>.

Understanding the worldwide volatilization of PCB material, the County is concerned over how it will, if ever, meet stormwater quality criteria requirements for PCB impairments. Further, the County is deeply concerned it will enter into a cycle where it will forever be required to clean up worldwide legacy PCB wastes including the nonstop precipitation of PCBs onto County jurisdictional areas.¹³ The County, with less than 11,000 people, simply cannot bear such enormous and never-ending costs.

The County would appreciate the Regional Administrators guidance on the specific data used to determine that the County was the genuine cause or contributor to area PCB impairments. Additionally, the County would request clarification on what the Regional Administrator envisions as related to how MS4 activities and best management practices could ever remove or treat PCB pollutants to the NMED State water quality standard of ≤ 0.64 ng/L for total PCBs, when, as reported in the LANL PCB Report, the median or average rain event at the Los Alamos Airport shows an average value of 0.14 ng/L of PCB deposition. With an average of 84 rain events per year, over 11.76 ng of PCB's could accumulate yearly throughout County areas.¹⁴ These levels of PCBs would be from areas outside and unknown to the County and to which the County would be required to address through some form of best management controls. Simply stated, the County's of population less than 11,000 would be unendingly charged with the cleanup of worldwide PCB legacy waste to which the County did not cause or contribute to. The County would also appreciate an explanation of why PCB wastes are not resolved through other EPA environmental programs such as the Resource Conservation and Recovery Act ("RCRA") or Toxic Substance Control Act ("TSCA") requirements.¹⁵

b. EPA Regional Administrator's use of LANL's "Background Metals Concentrations and Radioactivity in Storm Water on the Pajarito Plateau, Northern New Mexico" Report to find Cause.

In review of the LANL report titled "*Background Metals Concentrations and Radioactivity in Storm Water on the Pajarito Plateau, Northern New Mexico*"¹⁶ ("Metals Report"), the purpose of that report and study was to, "...(1) determine background concentrations in reference watersheds and western boundary locations and baseline concentrations in urban runoff for metals and radioactivity, and (2) determine the baseline concentrations of metals and radioactivity in urban runoff from the Los Alamos County townsite and developed landscapes within the Laboratory." LANL's Metals Report, Sect. 1.0, page 1.

The County is again concerned that the Regional Administrator is incorrectly using an un-vetted and unapproved document and data source, one not benefiting from the public process of comment and hearing, to find and assign cause of impairment. In addition to the Metals Report stated purpose (baseline values), the report's authors specifically excludes the influence of "runoff from legacy contamination at

¹³ See LANL PCB Report, Section 4.1.1., page 18 ("The precipitation total PCB concentrations ranged from 0.0 ng/l to 0.60 ng/l (Bandelier median: 0.12 ng/l; Los Alamos County Airport median: 0.14 ng/l)."(emphasis added)).

¹⁴ From Weatherunderground.com showing 2013 with 86 rain events and 2014 with 82 rain events per Los Alamos County Public Library Reference Desk. The total of 11.76 ng/L is 0.14 ng/L PCB average deposition per rain per event at 84 average rain events per year.

¹⁵ New Mexico is authorized by EPA to issue and enforce RCRA hazardous waste facility permits under 50 Fed Reg 1515 (January 11, 1985). New Mexico implements this authority under the HWA, NMSA 1978, § 74-4-1, et seq. (Repl. Pamph. 2000). On November 8, 1989, the New Mexico Environment Department (NMED) first issued a Hazardous Waste Facility Permit to LANL for the storage and treatment of hazardous waste. On November 30, 2010 NMED renewed that Permit. In addition to permitting the storage and treatment of hazardous wastes at 24 separate waste management units, the renewal Permit addresses the closure and post-closure care of disposal units located at TA-54 Areas G, H, and L, and corrective action activities for solid waste management units and areas of concern and groundwater monitoring and remediation facility-wide. See <https://www.env.nm.gov/HWB/Permit.htm>.

¹⁶ Report No. ERID-239557/LA-UR-13-22841, Environmental Programs Directorate, Los Alamos National Laboratory, April 2013.

Laboratory or surrounding sites” and intentionally avoided areas where possible contamination was known to be present. Nonetheless, using this data the Regional Administrator found,

“[a] Laboratory study of metals contamination in storm water runoff from urban areas at LANL and the Los Alamos Townsite found exceedances of New Mexico water quality criteria for cadmium, copper, and zinc.... In addition, the LANL metals report demonstrated that values for copper, zinc and nickel in urban storm water runoff in Los Alamos County substantially exceeded non-urban influenced Pajarito Plateau storm water concentrations.”

Designation Document, Section II. C., page 8. The County is concerned that the Regional Administrator is extrapolating data intended for one purpose that of setting a regional baseline value, for a contrary purpose, for that of finding the source or cause of the contamination. The County would appreciate the Regional Administrator’s methods and values he used or considered in review of this report as related to his final determination that the County’s storm drains are causing or significantly contributing to metal water quality impairments.

3. *Use of the Factors in 40 C.F.R. § 123.35(b) by the Regional Administrator is Inappropriate.*

The County is concerned that the Regional Administrator also improperly considered certain regulatory factors found in 40 C.F.R. § 123.35(b)(1).¹⁷ It is critical to note that this section and subsection of the federal code relates to only what state program authorities should “develop” in their state run small MS4 designation programs. In New Mexico, the EPA manages the National Pollutant Discharge Elimination System (“NPDES”) permitting program; there is no state level NPDES permitting authority. The title of the code part is “*As the NPDES Permitting Authority for regulated small MS4s, what is my role?*” 40 C.F.R. §123.35 (2015).¹⁸ The County would request clarification on why the Regional Administrator used federal rules designed for state implementation programs and submissions in his evaluation and finding that the County was a cause or contributor to water quality impairments.

II. Los Alamos County does not discharge to waters of the United States.

For the Regional Administrator to assert jurisdiction over the County, he must also find that the County contributes or discharges pollutants from its stormwater conveyance system into “waters of the United States.” See generally *U.S. v. Riverside Bayview*, 474 U.S. 121 (1985); *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001); *Rapanos v. United States*, 547 U.S. 715 (2006). The County contends that any discharge from its pervious areas do not discharge into waters of the United States, but instead discharges to waters of the State of New Mexico. The U.S. Supreme Court in *Rapanos* found that the first test to determine whether a discharge was to waters of the United States, was to look to the water in question. According to both Justice Kennedy and Justice Scalia, the in question water(s) must first be an *interstate water* that is *navigable* or *reasonably susceptible to navigation* or be directly “*adjacent*” to an interstate waters. See *Rapanos*, 547 U.S. 780; see also *Riverside Bayview*, 474 U.S. 121, 133 (1985)(*emphasis added*). Next, according to the plurality’s opinion, there must be a permanence and direct or visible connection of the jurisdictional water to the adjacent water or wetland. In Justice Kennedy’s concurring opinion, he believed that the more appropriate test was, if not directly “adjacent” to or having a visible connection to the navigable water, the adjacent water had to have a “substantial nexus” to the jurisdictional water. *Rapanos*, 547 U.S. at 780, *citing SWANCC*, 531 U.S. 159, 167.

¹⁷ See *Designation Document*, Section IV. B (“Other Considerations”), page 10.

¹⁸ See Subpart B- State Program Submissions, 40 C.F.R. §§ 123.21 through 123.36.

The County would appreciate the EPA Regional Administrator's discussion and clarification of how the determination was made that the" discharges from the County's jurisdictional areas enter or reach navigable, or adjacent tributaries to, waters of the United States. Attached hereto as **Exhibit D**, are Google Earth[®] maps showing the various discharge paths of stormwater through area canyons. The County asserts that its potential discharges from the five mesa tops at the Los Alamos townsite, as well as the discharges from the developed areas of the White Rock townsite, would be into dry canyons and related arroyos thus not into waters of the U.S. Such dry ephemeral canyons are not federal jurisdictional waters. See **Exhibits D-1** through **D-9**. From these photos, as well as knowledge of the local environment, it is more than evident that these waters are not navigable or easily susceptible to navigation and are not "adjacent" to any such waters.

As shown on Exhibits D-1 through D-9, all area waterways are ephemeral waters; that is they flow only through the direct influence of precipitation. The average 24-hour 10-year rain event is only 2.48 inches of precipitation, therefore these canyons and arroyos would unlikely reach the level of having a "substantial nexus" (even if found to be "adjacent") to any downstream jurisdictional receiving water(s). See NOAA Atlas 14 Point Precipitation Frequency Estimates: NM.¹⁹ None of this leads to a rational conclusion that such potential discharges are adjacent to or have substantial nexus to a required jurisdictional water.

Additionally, as noted in LANL's Metals Report, and the *Designation Document*,

"[s]urface water is carried downstream to the Rio Grande through relatively small channels situated in the bottom of canyons that have cut into the plateau surface (erodible Bandelier Tuff). A few canyons contain relatively short segments of "perennial" streams that flow year round because of spring sources, snowmelt, and rainfall, largely from watersheds extending into the mountains. However, most of the canyons originating on the plateau have ephemeral streams with flow limited to periods of short duration in response to intense thunderstorm rainfall events and snowmelt close to the mountain front."

Metals Report, Section 1.0, page 1. This is further supported by NMED's general designation of the area waters as "ephemeral" and "intermittent." See 20.6.4.128 NMAC (Rio Grande *Ephemeral and Intermittent*); see also 20.6.4.98 NMAC (*Intermittent*) Waters. The County would ask that the EPA Regional Administrator show and demonstrate that County discharges from its two incorporated areas are discharges to "waters of the United States."²⁰

III. Conclusions

The County appreciates the Regional Administrator's work in relation to the proposed designation, but believes that numerous issues remain unclear and potentially erroneous regarding how the Regional Administrator based his decision to designate the County as a MS4, specifically how he reached the conclusion that the County is causing or significantly contributing to receiving water quality impairments. The County would appreciate the Regional Administrators response to the above matters to ensure that there is a clear and unambiguous understanding on what material was used in reaching

¹⁹ Available at http://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html?bkmrk=nm. Last visited May 12, 2015. The County recognizes that the currently proposed rule by U.S. EPA on redefining the extent of waters of the U.S. could potentially alter this analysis if adopted, however current case law supports the presumption that County discharges are not to waters of the U.S., e.g., not an interstate water, or adjacent to interstate waters and does not have a direct observable connection or discharge volumes constituting a substantial nexus.

²⁰ See Justice Kennedy's opinion in *Rapanos v. U.S.*, 547 U.S. 715, 780 (2006)(The in question water must be: (1) adjacent to a traditionally held navigable water; (2) that there exist a substantial nexus between the waters; and (3) that the *tributary water must be relatively permanent in nature.*(emphasis added)

his decision and the rational and supportable basis of the underlying data. As has been discussed above, the County is concerned that the Regional Administrator used non-publicly reviewed third-party data that did not benefit from the public process of notice and hearing to reach his conclusion of cause and effect; all to which is contrary to the findings of the NMED 2014-2016 303d/305b report that listed the sources of listed impairments as “unknown.” The County believes that only that document, the 2014-2016 303d/305b list, or an independent study by EPA, should be considered in reaching the decision to designate the County as a MS4.

Further, the County would petition for a determination, whether conducted by U.S. EPA or the U.S. Army Corps of Engineers, if the County’s discharges would be to waters of the United States. As noted above, almost all area waters are ephemeral in nature and are distant from any recognized interstate water. The County contends that including County stormwater discharges as waters of the United States would likely improperly expand federal authority into areas of traditionally held state authority.

In conclusion, the County looks forward to continuing this important dialogue and believes that the parties to the proposed designation will greatly benefit from continued mutual work to address the concerns of EPA.

EXHIBITS:

Exhibit A. Listing of New Mexico’s Top 25 Most Populated Cities.

Exhibit B. Combined 2014-2016 Impairments from NMED 303d/305b List.

Exhibit C. GIS Map showing DOE/LANL PRS, SWMU, and SMAs.

Exhibit D. Google Earth Maps of Local Ephemeral Drainage Areas.

Exhibit A. Listing of New Mexico's Top 25 Most Populated Cities

From U.S. Census Bureau, Listing of 2010 National Urban Areas.

Available at <http://www.census.gov/geo/reference/ua/urban-rural-2010.html>.

	<u>City:</u>	<u>Population:</u>	<u>MS4 Permit?</u>	<u>TMDL?</u>
1.	Albuquerque, NM	741,318	Y	Y
2.	Las Cruces, NM	128,600	Y/DRAFT	
3.	Santa Fe, NM	89,284	Y/DRAFT	Y
4.	Los Lunas, NM	63,758	Y/DRAFT	
5.	Farmington, NM	53,049	Y/DRAFT	
6.	Roswell, NM	49,727		
7.	Clovis, NM	41,570		
8.	Hobbs, NM	36,696		
9.	Alamogordo, NM	31,862		
10.	Carlsbad, NM	29,839		
11.	Espanola, NM	26,418		
12.	Gallup, NM	23,114		
13.	Las Vegas, NM	15,609		
14.	Deming, NM	14,903		
15.	Taos, NM	13,686		
16.	Artesia, NM	12,764		
17.	Silver City, NM	12,705		
18.	Portales, NM	12,610		
19.	Chaparral, NM	12,328		
20.	Grants, NM	12,152		
21.	Lovington, NM	11,592		
22.	Los Alamos, NM ²¹	10,893	Proposed	No.
23.	Bloomfield, NM	9,892		
24.	Ruidoso, NM	9,596		
25.	Socorro, NM	8,991		

²¹ Of this listing, no other identified area is a county. The County of Los Alamos is comprised of the Los Alamos Townsite and the White Rock Townsite but also includes in vast majority DOE/LANL properties, U.S. Forest Service/National Park Service areas, and undeveloped/natural areas.

Exhibit B. Combined 2014-2016 Impairments from NMED 303 List

From: New Mexico Environment Department at

<https://www.env.nm.gov/swqb/303d-305b/2014-2016/index.html>.

Last Visited May 12, 2015.

8-digit USGS HUC	AU [Segment] Name	IMPAIRMENT	IR Category (by AU)	CYCLE FIRST LISTED
13020101	Los Alamos Canyon (NM-4 to DP Canyon)	Aluminum	5/5C	2006
13020101	Los Alamos Canyon (NM-4 to DP Canyon)	Gross alpha, adjusted	5/5C	2004
13020101	Los Alamos Canyon (NM-4 to DP Canyon)	PCB in Water Column	5/5C	2006
13020101	Los Alamos Canyon (DP Canyon to upper LANL bnd)	Aluminum	5/5C	2006
13020101	Los Alamos Canyon (DP Canyon to upper LANL bnd)	Gross alpha, adjusted	5/5C	2004
13020101	Los Alamos Canyon (DP Canyon to upper LANL bnd)	Mercury, total	5/5C	2006
13020101	Los Alamos Canyon (DP Canyon to upper LANL bnd)	PCB in Water Column	5/5C	2006
13020101	DP Canyon (Los Alamos Canyon to LANL bnd)	Aluminum	5/5C	2010
13020101	DP Canyon (Los Alamos Canyon to LANL bnd)	Gross alpha, adjusted	5/5C	2010
13020101	DP Canyon (Los Alamos Canyon to LANL bnd)	PCB in Water Column	5/5C	2010
13020101	Acid Canyon (Pueblo to headwaters)	Aluminum	5/5C	2010
13020101	Acid Canyon (Pueblo to headwaters)	COPPER, ACUTE	5/5C	2010
13020101	Acid Canyon (Pueblo to headwaters)	Gross alpha, adjusted	5/5C	2010
13020101	Acid Canyon (Pueblo to headwaters)	PCB in Water Column	5/5C	2010
13020101	Acid Canyon (Pueblo to headwaters)	COPPER, CHRONIC	5/5C	2014
13020101	Pueblo Canyon (Acid Canyon to headwaters)	Aluminum	5/5C	2006
13020101	Pueblo Canyon (Acid Canyon to headwaters)	Gross alpha, adjusted	5/5C	2002
13020101	Pueblo Canyon (Acid Canyon to headwaters)	PCB in Water Column	5/5C	2006
13020101	Pueblo Canyon (Los Alamos WWTP to Acid Canyon)	Gross alpha, adjusted	5/5C	2010
13020101	Pueblo Canyon (Los Alamos WWTP to Acid Canyon)	PCB in Water Column	5/5C	2010
13020101	Pueblo Canyon (Los Alamos Canyon to Los Alamos WWTP)	Aluminum	5/5C	2010
13020101	Pueblo Canyon (Los Alamos Canyon to Los Alamos WWTP)	Gross alpha, adjusted	5/5C	2010
13020101	Pueblo Canyon (Los Alamos Canyon to Los Alamos WWTP)	PCB in Water Column	5/5C	2010
13020101	Walnut Canyon (Pueblo Canyon to headwaters)	COPPER, ACUTE	5/5C	2014
13020101	Walnut Canyon (Pueblo Canyon to headwaters)	PCB in Water Column	5/5C	2010
13020101	Graduation Canyon (Pueblo Canyon to headwaters)	Aluminum	5/5C	2010
13020101	Graduation Canyon (Pueblo Canyon to headwaters)	COPPER, ACUTE	5/5C	2010

13020101	Graduation Canyon (Pueblo Canyon to headwaters)	PCB in Water Column	5/5C	2010
13020101	South Fork Acid Canyon (Acid Canyon to headwaters)	COPPER, ACUTE	5/5A	2014
13020101	South Fork Acid Canyon (Acid Canyon to headwaters)	ZINC, ACUTE	5/5A	2014
13020101	South Fork Acid Canyon (Acid Canyon to headwaters)	Gross alpha, adjusted	5/5A	2014
13020101	South Fork Acid Canyon (Acid Canyon to headwaters)	PCB in Water Column	5/5A	2014

IR Category:

4A = impaired, TMDLs have been written and approved for all documented impairments in this AU

4B = impaired, but TMDLs have not been written because other pollution control requirements are reasonably expected to result in attainment of the water quality standard in the near future

4C = impaired, but TMDLs have not been written because there are no documented impairments of any pollutants (i.e., the impairment is due to EPA's definition of "pollution", such as low flow alteration)

5A = impaired, TMDL development is underway or scheduled

5B = impaired, WQS review scheduled prior to TMDL development to confirm the WQS is appropriate/applicable

5C = impaired, additional data collection is needed prior to TMDL development

Exhibit C. GIS Map showing DOE/LANL PRS, SWMU, and SMAs.

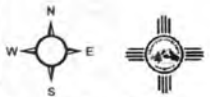
Exhibit C

Santa Fe National Forest



Santa Fe County

Los Alamos National Laboratory (LANL)



0 1,000 2,000 4,000 6,000 Feet

Los Alamos County GIS, June 2015



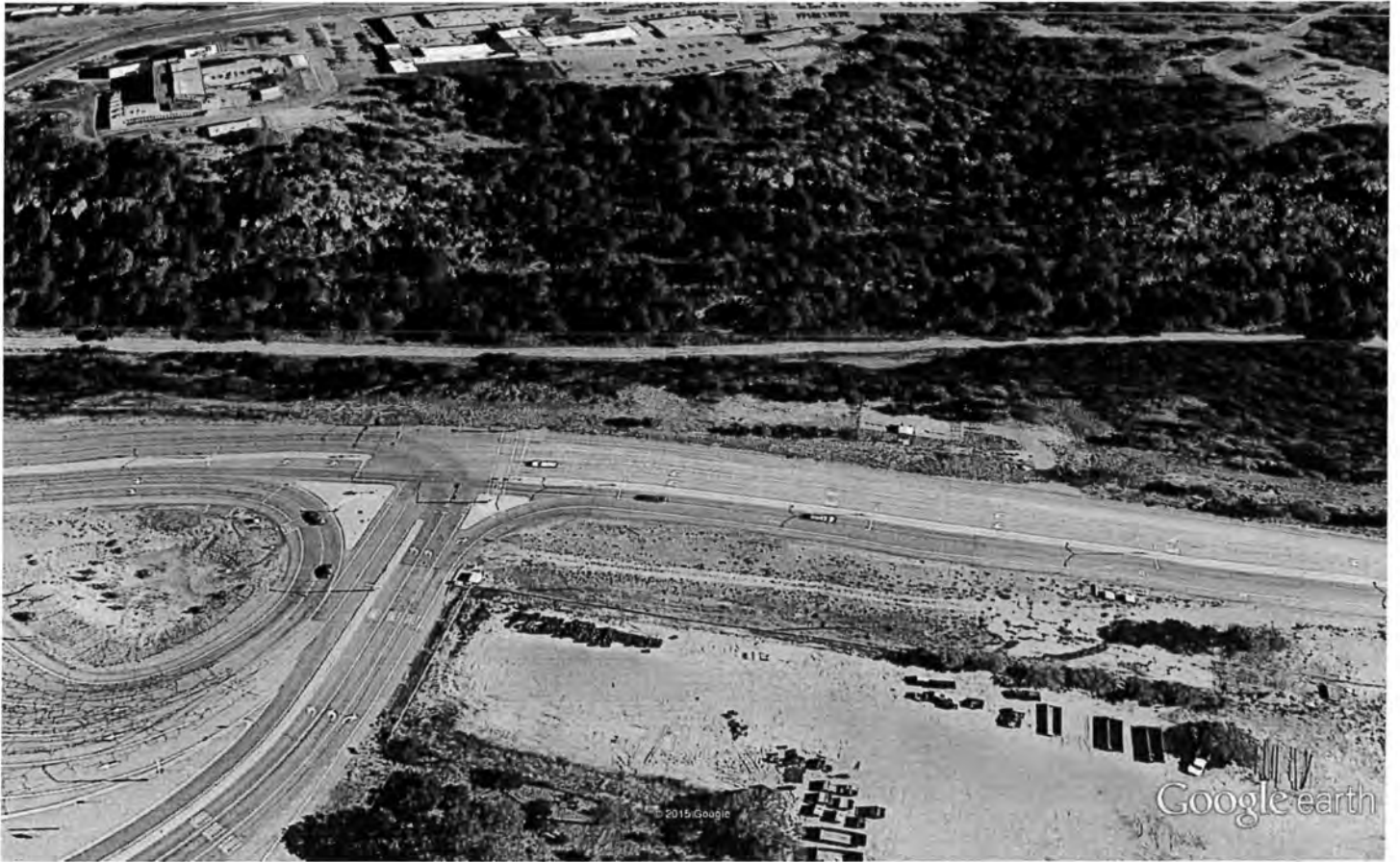
Exhibit D. Google Earth Maps of Local Drainage Areas.



Google earth



Los Alamos County main townsite showing canyons and drainage patterns.



Google earth

feet
meters



Los Alamos Canyon by bridge-showing dry ephemeral water path.



Google earth



Los Alamos Canyon downstream of bridge



Google earth

feet
meters



End of Los Alamos and DP Canyons before WWTP



Google earth

feet
meters

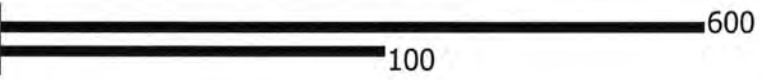


Near end of Los Alamos Canyon -Smith's is seen to north.



Google earth

feet
meters



Merging area of Los Alamos and DP Canyons



Google earth





Google earth

feet
meters



White Rock (southeastern boundary). As shown no drainage contains standing or flowing water(s) and drainage patterns are dry.



Google earth

feet
meters



White Rock main drainage pattern, dry ephemeral discharge.



Google earth



General distances from end of canyons of main townsite to receiving area of Rio Grande. As shown, no substantial nexus or flowing tributary is present.



New Mexico DEPARTMENT OF
TRANSPORTATION

Nasim

June 12, 2015

Ms. Evelyn Rosborough
Environmental Protection Agency (EPA)
Water Quality Protection Division (6WQ-NP)
1445 Ross Ave., Suite 1200
Dallas, TX 75202

Subject: New Mexico Department of Transportation Comments on EPA Preliminary Designation of the Los Alamos Municipal Separate Storm Sewer System (MS4), Federal Register 13852 [FRL-9924-58-Region-6]

Dear Ms. Rosborough:

New Mexico Department of Transportation (NMDOT) is in receipt of the subject notice and submitted herewith please find our response to this matter. NMDOT recognizes EPA's authority to designate MS4s outside Census designated Urbanized Areas.

- 1) NMDOT strongly disagrees with EPA's proposed extents for the proposed Los Alamos MS4. NMDOT concurs with both Los Alamos National Laboratory (LANL) and Los Alamos County (LAC) that the extent of the proposed Los Alamos MS4 should be limited to the areas of urbanized development within both LANL and LAC. The intent of the MS4 program is to address stormwater quality issues from urbanized areas, as runoff is conveyed through municipal separate storm sewer systems. Including non-urbanized areas which have no storm sewer systems is beyond the scope of the program and unnecessarily burdensome to the permittees.
- 2) Will EPA be providing an estimation of the 90th or 80th percentile storm event discharge volumes for compliance with the Post-Construction Stormwater Management in New Development and Redevelopment BMP? Will the alternative Option A and Option B described in the MIDDLE RIO GRANDE WATERSHED BASED MUNICIPAL SEPARATE STORM SEWERSYSTEM PERMIT be allowed?
- 3) Regarding the Illicit Discharge Detection and Elimination (IDDE) portion of the Permit, as the EPA is aware, NMDOT has no authority to enact or enforce an ordinance of any kind. Additionally, we have no authority or ability to

Susana Martinez
Governor

Tom Church
Cabinet Secretary

Commissioners

Ronald Schmeits
Chairman
District 4

Dr. Kenneth White
Secretary
District 1

David Sepich
Commissioner
District 2

Keith Mortensen
Commissioner
District 3

Butch Mathews
Commissioner
District 5

Jackson Gibson
Commissioner
District 6

PLANNING & ANALYSIS BRANCH
6WQ-N

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15 JUN 16 PM 2:39

inspect or enforce compliance with any illicit discharges which originate outside NMDOT Right-of-Way. Should an illicit discharge be detected, NMDOT will notify NMED, EPA, and either LANL or LAC (depending which entity has jurisdiction over the property from which the discharge is coming).

Sincerely,

A handwritten signature in black ink, appearing to read 'Habib Abi-Khalil', with a long, sweeping flourish extending to the right.

Habib Abi-Khalil, PE, Acting District 5 Engineer
New Mexico Department of Transportation
7315 Cerrillos Road
Santa Fe NM 87502

xc: Anthony Lujan, NMDOT Deputy Secretary of Operations
Ted Barber, NMDOT Drainage Section Manager
File

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Monday, April 20, 2015 11:34 AM
To: Jahan, Nasim
Cc: Larsen, Brent; Dwyer, Stacey
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

fyi

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: kristinagrayerfisher@gmail.com [mailto:kristinagrayerfisher@gmail.com]
Sent: Thursday, April 16, 2015 10:34 AM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

April 16, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards.

As a lifelong New Mexican who cares deeply about the health of the Rio Grande watershed, I commend the EPA for taking this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Ms. Kristina Fisher
1608 Camino la Canada
Santa Fe, NM 87501

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Monday, April 20, 2015 10:12 AM
To: Jahan, Nasim
Cc: Larsen, Brent; Dwyer, Stacey
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

FYI

Evelyn Rosborough
U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: mcoca44@comcast.net [mailto:mcoca44@comcast.net]
Sent: Friday, April 17, 2015 11:18 AM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

April 17, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Ms. Diane Paolazzi
2313 Callejon Hermoso
Santa Fe, NM 87505

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Monday, April 20, 2015 10:03 AM
To: Jahan, Nasim
Cc: Larsen, Brent; Dwyer, Stacey
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

fyi

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: jay@nukewatch.org [mailto:jay@nukewatch.org]
Sent: Saturday, April 18, 2015 10:06 PM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

April 18, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Jay Coghlan
712 camino Militar
Santa Fe, NM 87501

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Tuesday, April 14, 2015 5:41 PM
To: Jahan, Nasim
Cc: Larsen, Brent; Dwyer, Stacey
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

Fyi

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: jtruth@taosnet.com [mailto:jtruth@taosnet.com]
Sent: Monday, April 13, 2015 9:38 PM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

April 13, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

We, the citizens who love our blessed Rio Grande, need and deserve assurance that the runoff from Los Alamos be analyzed closely, and measures taken to divert what runoff finds it's way to the Rio Grande and its tributaries remains clean and pure in order to healthily support wildlife living in and around it and humans living and recreating near and around it.

Thank you for the steps you have already taken in this very right direction!

Sincerely,

Ms. Julia Claus
230 Roy Road
Taos, NM 87571

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Tuesday, April 14, 2015 5:40 PM
To: Jahan, Nasim
Cc: Larsen, Brent; Dwyer, Stacey
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

fyi

Evelyn Rosborough
U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: gormantd@gmail.com [mailto:gormantd@gmail.com]
Sent: Monday, April 13, 2015 11:24 PM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

April 13, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Thomas Gorman
31 Coyote Springs Rd
Santa Fe, NM 87508

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Tuesday, April 14, 2015 5:38 PM
To: Jahan, Nasim
Cc: Larsen, Brent; Dwyer, Stacey
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

fyi

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: susiev@cybermesa.com [mailto:susiev@cybermesa.com]
Sent: Tuesday, April 14, 2015 1:06 AM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

April 14, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Ms. Susan Verkamp
Box 557
El Prado, NM 87529

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Tuesday, April 14, 2015 5:37 PM
To: Jahan, Nasim
Cc: Larsen, Brent; Dwyer, Stacey
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

fyi

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: susann@taosnet.com [mailto:susann@taosnet.com]
Sent: Tuesday, April 14, 2015 7:58 AM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

April 14, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Ms. Susann McCarthy
200A Villa Maria
Taos, NM 87571

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Tuesday, April 14, 2015 5:36 PM
To: Jahan, Nasim
Cc: Larsen, Brent; Dwyer, Stacey
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

Fyi

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: Rhutchinsdc@gmail.com [mailto:Rhutchinsdc@gmail.com]
Sent: Tuesday, April 14, 2015 8:16 AM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

April 14, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Dr. Randy Hutchins
20 eagle rd
Tijeras, NM 87059

Rosborough, Evelyn

From: Gillian Sutton <gillian@krsnam1490.com>
Sent: Monday, April 13, 2015 11:35 PM
To: Rosborough, Evelyn
Subject: Public comment about the Amigos Bravos petition

The Regional Administrator of the Environmental Protection Agency Region 6 (EPA) is providing notice of the availability of a preliminary determination that certain storm water discharges in Los Alamos County, New Mexico will be required to obtain National Pollutant Discharge Elimination System (NPDES) permit coverage under the Clean Water Act. This action is a result of "A Petition by Amigos Bravos for a Determination that Storm Water Discharges in Los Alamos County Contribute to Water Quality Standards Violations and Require a Clean Water Act Permit," dated June 30, 2014

This is my comment about the above proposal.

I have lived in Los Alamos for over 50 years and have never seen activities from the laboratory spread waste throughout Los Alamos County. They are very careful with everything they do. I feel asking the citizens who live in Los Alamos to control their water runoff is an unreasonable request. We are a community of 15,000 people. I do not believe our behavior as normal citizens warrants this kind of regulation or economic burden.

If this is the kind of regulation that the EPA deem necessary, it should be imposed on all communities that live in the Rio Grande watershed due to the fact they have cars, industries that might pollute, and the usual activities that may endanger a water supply. Los Alamos citizens do not behave in a manner that makes a greater danger to the watershed than any other small communities on the river such as Espanola, Taos, Okayweegeh Pueblo etc. We live a much farther distance away that Espanola which has more than one super sight clean up zone just yards from the Rio Grande but no one seems concerned about it.

Who would pay for this type of regulation? The lab monitors all its runoff to make sure it is clean. Our community would have to start from scratch. Private investors that own the public parking areas do not have the resources to recreate them and small businesses do not have the profit margin for their expenses to increase greatly to rebuild parking lots. I feel it would drive many current businesses out of business and prevent any new economic growth if the private sector was required to fund this regulation.

Thank you,

Gillian Sutton

Gillian Sutton

Owner/General Manager

Flowers by Gillian

505-663-0012

www.FlowersbyGillian.net

KRSN AM 1490 and FM 107.1

505.663.1490

www.krsnam1490.com

3801 Arkansas Suite E

Los Alamos NM 87544



This email has been checked for viruses by Avast antivirus software.

www.avast.com

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Tuesday, April 14, 2015 4:28 PM
To: Jahan, Nasim
Cc: Larsen, Brent; Dwyer, Stacey
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

FYI

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: dunlapmoffitt@gmail.com [mailto:dunlapmoffitt@gmail.com]
Sent: Tuesday, April 14, 2015 10:05 AM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

April 14, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

Kudos to the EPA for designating the run off from urban areas around LANL as a potential hazard! Please keep protecting New Mexico citizens. We're behind you!

Sincerely,

Dr. Ann Dunlap
2710 Veranda Rd NW
Albuquerque, NM 87107

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Tuesday, April 14, 2015 4:27 PM
To: Jahan, Nasim
Cc: Larsen, Brent; Dwyer, Stacey
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

FYI

Evelyn Rosborough
U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: ssdog@me.com [mailto:ssdog@me.com]
Sent: Tuesday, April 14, 2015 11:49 AM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

April 14, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

Glad to see the EPA has determined water discharges from Los Alamos National Laboratory and Los Alamos County can exceed state water quality standards. As a citizen who spends a fair amount of time on the rio and in the area recreating I have a deep concern for the Rio Grande water shed. Glad to see the EPA involved in protecting it. Because of the uniqueness of this area and the unique threat from radio activity from the labs, I urge you to move forward with this to clean up all waters from rains discharging into the Rio Grande.

Sincerely,

Mr. STEPHEN SCHMIDT
21 CALLE DEBRA
SANTA FE, NM 87507

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Tuesday, April 14, 2015 4:22 PM
To: Jahan, Nasim
Cc: Larsen, Brent; Dwyer, Stacey
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

fyi

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: goodkaz@newmexico.com [mailto:goodkaz@newmexico.com]
Sent: Tuesday, April 14, 2015 12:30 PM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

April 14, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Ms. Arifa Goodman
PO Box 303
San Cristobal, NM 87564

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Tuesday, April 14, 2015 4:21 PM
To: Jahan, Nasim
Cc: Larsen, Brent; Dwyer, Stacey
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

FYI

Evelyn Rosborough
U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: nicoled009@comcast.net [mailto:nicoled009@comcast.net]
Sent: Tuesday, April 14, 2015 12:47 PM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

April 14, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Ms. Nicole de Jurenev
201 Alamo Drive
Santa Fe, NM 87501

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Tuesday, April 14, 2015 4:17 PM
To: Jahan, Nasim
Cc: Larsen, Brent; Dwyer, Stacey
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

fyi

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: taosweaver@msn.com [mailto:taosweaver@msn.com]
Sent: Tuesday, April 14, 2015 1:59 PM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

April 14, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Ms. Carol Weaver
1820 A Tafoya Rd
Ranchos de Taos, NM 87557

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Tuesday, April 14, 2015 4:16 PM
To: Jahan, Nasim
Cc: Larsen, Brent; Dwyer, Stacey
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

FYI

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: lilalulu9@gmail.com [mailto:lilalulu9@gmail.com]
Sent: Tuesday, April 14, 2015 4:05 PM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

April 14, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

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Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Ms. Jayne Schell
HCR 74 bx 22029
El Prado, NM 87529

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Monday, April 13, 2015 2:38 PM
To: Jahan, Nasim
Cc: Larsen, Brent; Dwyer, Stacey
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

fyi

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: forests@ucla.edu [mailto:forests@ucla.edu]
Sent: Monday, April 13, 2015 2:35 PM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

April 13, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Dr. Melissa Savage
1477 1/2 Canyon Road
Santa Fe, NM 87501

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Monday, April 13, 2015 2:37 PM
To: Jahan, Nasim
Cc: Larsen, Brent; Dwyer, Stacey
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

fyi

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: patsyscott67@mac.com [mailto:patsyscott67@mac.com]
Sent: Monday, April 13, 2015 2:34 PM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

April 13, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Patsy and Dennis Scott
114 Vista Lane
Taos, NM 87571

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Monday, April 13, 2015 2:37 PM
To: Jahan, Nasim
Cc: Larsen, Brent; Dwyer, Stacey
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

FYI

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: a.rose@centurytel.net [mailto:a.rose@centurytel.net]
Sent: Monday, April 13, 2015 2:29 PM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

April 13, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Ms. Amanda Rose
815 Main Street
San Luis, CO 81152

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Monday, April 13, 2015 2:36 PM
To: Jahan, Nasim
Cc: Larsen, Brent; Dwyer, Stacey
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

FYI

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: kathleenc@cybermesa.com [mailto:kathleenc@cybermesa.com]
Sent: Monday, April 13, 2015 2:27 PM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

April 13, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Mrs. Kathleen Clark
1212 Vista Verde Crt
Sanra Fe, NM 87501

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Monday, April 13, 2015 2:36 PM
To: Jahan, Nasim
Cc: Larsen, Brent; Dwyer, Stacey
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

fyi

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: meganaoreilly@gmail.com [mailto:meganaoreilly@gmail.com]
Sent: Monday, April 13, 2015 2:23 PM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

April 13, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Megan O'Reilly
608 witts end road
taos, NM 87571

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Monday, April 13, 2015 2:35 PM
To: Jahan, Nasim
Cc: Larsen, Brent; Dwyer, Stacey
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

FYI

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: info@judithphillipsdesignoasis.com [mailto:info@judithphillipsdesignoasis.com]
Sent: Monday, April 13, 2015 2:18 PM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

April 13, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Ms. Judith Phillips
1840 Zearing Avenue NW
Albuquerque, NM 87104

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Monday, April 13, 2015 2:35 PM
To: Jahan, Nasim
Cc: Larsen, Brent; Dwyer, Stacey
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

fyi

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: belizeboblawrence@gmail.com [mailto:belizeboblawrence@gmail.com]
Sent: Monday, April 13, 2015 2:17 PM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

April 13, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Mr. Robert Lawrence
36726 US Highway 285
Ojo Caliente, NM 87549

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Monday, April 13, 2015 2:34 PM
To: Jahan, Nasim
Cc: Larsen, Brent; Dwyer, Stacey
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

fyi

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: merlin@evening-sun.com [mailto:merlin@evening-sun.com]
Sent: Monday, April 13, 2015 2:15 PM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

April 13, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Mr. Merlin Emrys
Chapala Road
Santa Fe, NM 87508

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Monday, April 13, 2015 6:50 AM
To: Jahan, Nasim
Cc: Larsen, Brent
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

FYI

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: darel233455@gmail.com [mailto:darel233455@gmail.com]
Sent: Sunday, April 12, 2015 5:46 AM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

April 12, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Dr. Iuidji IImdfQFwGAOWHkOL
uBoHtMdAgwuzn
New York, LA 10679

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Tuesday, March 31, 2015 10:47 AM
To: Jahan, Nasim
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Nasim..

Please see the comments below.

Thanks,

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: jocare@hotmail.com [mailto:jocare@hotmail.com]
Sent: Friday, March 27, 2015 6:58 PM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

March 27, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I AM ENCOURAGED BY THE EPA'S DETERMINATION. I WILL SAY IT IS COMMON SENSE THAT SAYS ANY CHEMICALS, POISONS ETC. FLOWING FROM PARKING LOTS, STORM DRAINS ETC. ARE GOING TO AFFECT THOSE DOWNSTREAM. HOW COULD IT NOT? IT IS TIME FOR THOSE THAT ALLOW THIS TO HAPPEN ARE MANDATED TO STOP THIS EFFLUENT FROM REACHING THOSE DOWNSTREAM. KEEP UP THE GOOD WORK.

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

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tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Ms. Mary Jo Carey
24 Wisdom Way
El Prado, NM 87529

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Tuesday, March 31, 2015 10:47 AM
To: Jahan, Nasim
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Nasim.

Please see the comments below.

Thanks,

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: jocare@hotmail.com [mailto:jocare@hotmail.com]
Sent: Friday, March 27, 2015 6:58 PM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

March 27, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I AM ENCOURAGED BY THE EPA'S DETERMINATION. I WILL SAY IT IS COMMON SENSE THAT SAYS ANY CHEMICALS, POISONS ETC. FLOWING FROM PARKING LOTS, STORM DRAINS ETC. ARE GOING TO AFFECT THOSE DOWNSTREAM. HOW COULD IT NOT? IT IS TIME FOR THOSE THAT ALLOW THIS TO HAPPEN ARE MANDATED TO STOP THIS EFFLUENT FROM REACHING THOSE DOWNSTREAM. KEEP UP THE GOOD WORK.

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated

tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Ms. Mary Jo Carey
24 Wisdom Way
El Prado, NM 87529

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Friday, March 27, 2015 2:06 PM
To: Jahan, Nasim
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

FYI

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: dperry3@uoregon.edu [mailto:dperry3@uoregon.edu]
Sent: Friday, March 27, 2015 2:02 PM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

March 27, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Ms. Denielle Perry
235 Ash Street
Eugene, OR 97402

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Friday, March 27, 2015 10:42 AM
To: Jahan, Nasim
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

FYI

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: belizeboblawrence@gmail.com [mailto:belizeboblawrence@gmail.com]
Sent: Friday, March 27, 2015 10:15 AM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

March 27, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Mr. ROBERT LAWRENCE
23726 US HIGHWAY 285 north of
Ojo Caliente, NM 87549

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Friday, March 27, 2015 10:42 AM
To: Jahan, Nasim
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

FYI

Evelyn Rosborough
U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: nicoled009@comcast.net [mailto:nicoled009@comcast.net]
Sent: Friday, March 27, 2015 9:57 AM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

March 27, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Ms. Nicole de Jurenev
201 Alamo Drive
Santa Fe, NM 87501

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Friday, March 27, 2015 10:41 AM
To: Jahan, Nasim
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

FYI

Evelyn Rosborough
U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: marigrana@cybermesa.com [<mailto:marigrana@cybermesa.com>]
Sent: Friday, March 27, 2015 5:37 AM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

March 27, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,
I strongly support ERA's preliminary determination to evaluate the water quality discharged from the areas surrounding the Los Alamos lab. As a resident of Santa Fe, I have long been concerned about the quality of our drinking water entering the Rio Grande from the lab environment.

Sincerely,

Ms. Mary Grana
104 Lorenzo Rd
Santa Fe, NM 87501

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Friday, March 27, 2015 10:40 AM
To: Jahan, Nasim
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

FYI

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: info@judithphillipsdesignoasis.com [mailto:info@judithphillipsdesignoasis.com]
Sent: Friday, March 27, 2015 9:01 AM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

March 27, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Ms. Judith Phillips
1840 Zearing Avenue NW
Albuquerque, NM 87104

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Friday, March 27, 2015 10:40 AM
To: Jahan, Nasim
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

FYI

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: joel@bluenergyusa.com [<mailto:joel@bluenergyusa.com>]
Sent: Thursday, March 26, 2015 11:26 PM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

March 26, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Mr. Joel Goldblatt
3900 Paseo del Sol
Santa Fe, NM 87507

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Friday, March 27, 2015 10:39 AM
To: Jahan, Nasim
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

FYI

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: alston@lundgrenmd.com [mailto:alston@lundgrenmd.com]
Sent: Thursday, March 26, 2015 11:05 PM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

March 26, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

In WWII Los Alamos Labs were considered essential to the war effort and all else was secondary. That is no longer the situation.

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Dr. Alston Lundgren
101 La Placita Circle
Santa Fe, NM 87505-4008

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Tuesday, March 31, 2015 10:47 AM
To: Jahan, Nasim
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Nasim.

Please see the comments below.

Thanks,

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: jocare@hotmail.com [mailto:jocare@hotmail.com]
Sent: Friday, March 27, 2015 6:58 PM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

March 27, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I AM ENCOURAGED BY THE EPA'S DETERMINATION. I WILL SAY IT IS COMMON SENSE THAT SAYS ANY CHEMICALS, POISONS ETC. FLOWING FROM PARKING LOTS, STORM DRAINS ETC. ARE GOING TO AFFECT THOSE DOWNSTREAM. HOW COULD IT NOT? IT IS TIME FOR THOSE THAT ALLOW THIS TO HAPPEN ARE MANDATED TO STOP THIS EFFLUENT FROM REACHING THOSE DOWNSTREAM. KEEP UP THE GOOD WORK.

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated

tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Ms. Mary Jo Carey
24 Wisdom Way
El Prado, NM 87529

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Thursday, June 18, 2015 5:33 PM
To: Jahan, Nasim
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: mauraexplorer@yahoo.com [mailto:mauraexplorer@yahoo.com]
Sent: Monday, April 13, 2015 2:27 PM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

April 13, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Ms. Maura Rae
62 Hwy 150
El Prado, NM 87529

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Thursday, June 18, 2015 5:33 PM
To: Jahan, Nasim
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: Celticmanst@aol.com [mailto:Celticmanst@aol.com]
Sent: Monday, April 13, 2015 8:52 PM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

April 13, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in groundwater contamination! exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Mr. Simon Teolis
7 Goodnight Trail East
Santa Fe, NM 87506

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Thursday, June 18, 2015 5:33 PM
To: Jahan, Nasim
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: djupson@aol.com [mailto:djupson@aol.com]
Sent: Monday, April 13, 2015 11:13 PM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

April 13, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Dr. Dona Upson
530 Montclair SE
Albuquerque, NM 87108

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Thursday, June 18, 2015 5:32 PM
To: Jahan, Nasim
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: bobgontram@yahoo.com [mailto:bobgontram@yahoo.com]
Sent: Tuesday, April 14, 2015 5:51 AM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

April 14, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

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Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Mr. Bob Gontram
17A Calle del Sol
Ranchos de Taos, NM 87557

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Thursday, June 18, 2015 5:32 PM
To: Jahan, Nasim
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: snowflower@cybermesa.com [mailto:snowflower@cybermesa.com]
Sent: Tuesday, April 14, 2015 4:15 PM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

April 14, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Ms. Janet Snowden
223 N Guadalupe #120
Santa Fe, NM 87501

Jahan, Nasim

From: Rosborough, Evelyn
Sent: Thursday, June 18, 2015 5:31 PM
To: Jahan, Nasim
Subject: FW: Support for EPA's Preliminary Designation of LANL and Los Alamos

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
ph: 214.665-7515
fax: 214.665-6490
email: rosborough.evelyn@epa.gov

From: cfhammer75@gmail.com [mailto:cfhammer75@gmail.com]
Sent: Tuesday, April 14, 2015 5:26 PM
To: Rosborough, Evelyn
Subject: Support for EPA's Preliminary Designation of LANL and Los Alamos

April 14, 2015

Ron Curry
EPA Regional Administrator, Region 6

Dear Administrator Curry,

I am writing in support of EPA's preliminary determination that discharges from urban areas at Los Alamos National Laboratory and Los Alamos County result in or have the potential to result in exceedances of state water quality standards. As a citizen that cares deeply about the health of the Rio Grande watershed I am encouraged that the EPA has taken this step towards protecting water quality on the Pajarito Plateau and in the Rio Grande.

I urge you as Regional Administrator to finalize this preliminary determination as soon as possible and move forward with requiring clean up of these contaminated discharges that pollute the Rio Grande and associated tributaries on the Pajarito Plateau every time it rains.

Because of the unique nature of the site I urge you to require treatment and monitoring requirements as permit conditions in any subsequent draft NPDES permit for these discharges.

Sincerely,

Charles F Hammer
2017 Calle Lejano
Santa Fe, NM 87501-8747

Appendix 4: EPA's analysis on LANL's PCB and Metal Report

Discussion of the Polychlorinated Biphenyls in Precipitation and Stormwater within the Upper Rio Grande Watershed Report prepared by LANL (LANL PCB Report)

The LANL PCB Report presents baseline, base-flow, and storm-flow concentrations of polychlorinated biphenyls (PCBs) in certain surface waters located in the upper Rio Grande watershed and in areas in and around LANL as part of a cooperative investigation by the U.S. Department of Energy (DOE), the New Mexico Environment Department–DOE Oversight Bureau, and LANL.

The objectives of this study were to establish (1) baseline levels of PCB concentrations in precipitation and snowpack near Los Alamos, New Mexico, and from alpine peaks overlooking the northern Rio Grande watershed up to the state border with Colorado; (2) baseline levels of PCB concentrations in stormwater in northern New Mexico streams and arroyos that are tributaries to the Rio Grande and Rio Chama; (3) the range of PCB concentrations found in the Rio Grande during base-flow (dry weather flow) and storm-flow conditions; (4) baseline levels of PCBs in stormwater from undeveloped watersheds of the Pajarito Plateau and the northeast flank of the Jemez Mountains near Los Alamos; (5) the concentrations of PCBs in urban runoff from the Los Alamos Townsite adjacent to LANL (PCB Report, Figure 42: Locations of urban runoff monitoring stations); and (6) how these findings may be used to target significant sources of PCBs.

These investigations included the Los Alamos Townsite, LANL watersheds, remote watersheds on the Pajarito Plateau, and the Rio Grande upstream and downstream of LANL. EPA independently reviewed the data included in the report and concludes that discharges from Los Alamos Townsite and LANL have or have the reasonable potential to contain PCBs at levels exceeding New Mexico water quality standards (WQS). First, the mean PCB value for Los Alamos Townsite stations exceeds at least one of the state's WQS for PCBs. Second, more than half of the individual samples associated with Los Alamos Townsite exceeded at least one WQS for PCBs. Third, while background levels reported also exceed WQS, both mean and maximum values for urban runoff were reported as at least an order of magnitude higher than background levels.

Previous NMED and LANL PCB Investigations

As per LANL's PCB Report, "Annual watershed monitoring, site-specific stormwater monitoring, and TMDL baseline studies conducted by LANL and NMED have identified elevated levels of PCBs in stormwater in tributaries draining the Pajarito Plateau (NMED 2010, 213452; NMED 2012, 215121). The results indicate the presence of PCBs in stormwater runoff from some LANL solid waste management units (SWMUs) and areas of concern (AOCs) on mesa tops, in some samples from Pajarito Plateau canyons, and in a number of instances from the Rio Grande and several of its tributaries. An unpublished cooperative PCB study conducted by DOE, LANL, NMED, Los Alamos County, and San Ildefonso Pueblo in 2002–2003 identified additional sources of PCBs in stormwater from other portions of the upper Rio Grande watershed."

Included in attachments to the Petition was a copy of a December 15, 2009 NMED Press Release: "Environment Department Issues Notice of Violation and Penalty to Los Alamos County for Allowing Discharge of PCBs into Canyon from County's Annex" which stated that "The county violated state water quality standards on Aug. 3 and Sept. 5, 2007, by allowing the discharge of PCBs into surface waters in excess of state water quality standards. The standards establish human health criterion for PCB of 0.00064 micrograms per liter to protect the designated uses of unclassified ephemeral waters and Los Alamos Canyon. The department's Surface Water Quality Bureau collected a set of discharge samples from the county's annex yard Aug. 3, 2007 that showed a geometric mean of 0.16316 micrograms per liter and another set of samples on Sept. 5, 2007 that revealed a geometric mean of 0.00360 micrograms per liter. Those samples were approximately 255 times and six times respectively the state's PCB human health criterion. In addition, the August 3 samples were approximately 12 times the PCB wildlife habitat criterion."

Sampling Method and Quality Control

For LANL's PCB Report, PCB concentrations were measured using a high-precision analytical method (U.S. Environmental Protection Agency Method 1668A) that is capable of measuring concentrations as low as a few parts per quadrillion. The results were statistically reviewed to identify any anomalous contamination present at the sites. The concentrations were then compared with the New Mexico Water Quality WQS to gauge the magnitude of baseline PCB concentrations in surface waters.

The WQC for total PCBs in water are 0.64 ng/L (0.64 ppt) for the protection of human health and 14 ng/L for the protection of wildlife habitat. The WQC for acute and chronic protection of aquatic life are 14 ng/L and 2 µg/L, respectively.

Heightened PCB concentrations above 100 ng/L were measured in Los Alamos County urban runoff (PCB report, pp 61-64). The higher concentrations associated with the urban runoff likely resulted from the contribution of additional diffuse local sources in the urban environment. Total PCB concentrations for precipitation and stormwater are summarized in Table 16 - **Summary of Total PCB Concentrations in Upper Rio Grande Watershed** (provided below as Table 1) in the LANL's PCB report (Page 65).

Table 1
Summary of Total PCB Concentrations in Upper Rio Grande Watershed

Category	Median (ng/L)	UTL (ng/L)	Max Conc. (ng/L)	Percentage of Results Greater Than NM Health	Percentage of Results Greater Than NM Wildlife Standard (14
Precipitation	0.12	0.68	0.61	0	0
Snowpack	0.14	0.7	0.65	8	0
Rio Grande/Rio Chama					
Base flow	0.01	—*	1.36	6	0
Stormwater (runoff)	0.24	—	51.4	39	3
Northern New Mexico Tributaries Stormwater	5.5	24	30.6	91	22
Baseline Pajarito Plateau Stormwater					
Reference Sites (Flows originating on Pajarito Plateau)	0.4	11.7	11.6	28	0
Western Boundary Sites (Flows Originating in Jemez Mountains)	2.1	19.5	20.7	78	17
Reference and Western Boundary Combined	0.97	13	20.7	56	10
Urban Runoff Los Alamos Townsite	12	98	144	98	46

*— = Not available.

Source: LANL PCB Report.

Discussion of the Background Metals Concentrations and Radioactivity in Storm Water on the Pajarito Plateau, Northern New Mexico Report prepared by LANL (LANL Metals Report)

The LANL Metals Report involved a study to understand the chemical composition of storm water runoff in developed and undeveloped areas in the Laboratory and the Los Alamos County Townsite. LANL collected samples from non-urban, non-laboratory influenced reference sites as well as from sites representing runoff from the urbanized areas of the Los Alamos Townsite and developed landscapes within the Laboratory. The study reveals that neither the reference nor the urban sites were influenced by point source discharges from LANL's individual storm water permit. However, this study shows a significant contribution of metals from urban runoff on the Pajarito Plateau.

Storm water samples were collected in the vicinity of the Townsite and Laboratory property to measure metals concentrations and radioactivity in locations representing storm water runoff from urban environments on the Pajarito Plateau. The majority of samplers were located to collect storm water runoff samples from housing developments, schools, and a golf course. According to the Report, no urban runoff samplers were placed below any known areas of concentrated contamination. (See Section 2.2 and Figure 3 of the LANL Metals Report).

Based on review of the data from the LANL Metals Report, as opposed to conclusions reached by LANL within the report, EPA concludes that storm water discharges from LANL and Los Alamos Townsite have the potential to at a minimum contribute to exceedances of one or more of New Mexico's WQS, thereby meeting the criteria for designation under the CWA and federal regulations. After examining the available data with a particular emphasis on three basic factors that the agency believes provide the strongest link between the quality of storm water discharges and impairments of receiving waters, EPA determined that sufficient evidence exists to conclude that the discharges from the Los Alamos Urban Cluster and LANL have the potential to at a minimum contribute to impairment of water quality. First, the State has listed at least one of the receiving waters for LANL and Los Alamos Townsite discharges as impaired for one or more parameters listed as a cause of impairment on the state's CWA 303(d) list. Second, the mean of the urban runoff samples from LANL and the Los Alamos Urban Cluster exceeded at least one of the state's WQS for Aluminum, Cadmium, Copper, and Zinc and the maximum urban runoff sample value exceeded at least one WQS for Aluminum, Cadmium, Copper, and Zinc. Third, the mean of the urban runoff samples from these areas exceeded mean of the background reference site samples for Aluminum, Cadmium, Copper, and Zinc.

There were no LANL Metals Report sampling sites in the White Rock Urban Cluster and no receiving waters (other than the Rio Gande) for White Rock urban runoff have been listed as impaired by the State. Los Alamos Townsite data may not be representative of runoff from White Rock Townsite due to the age and nature of activities that take place or have taken place in the past. Taking into consideration the comments by the State and Los Alamos County, EPA concludes more metals data is needed to make the case for designation of the White Rock.

Methods used in Collecting Samples

The LANL Metals Report states that the Storm water samples were collected using automated samplers and manual grab samples. The vast majority of stream channels within the study area were remote ephemeral drainages that flowed only in response to snowmelt or rainfall events.

The Metals Report also states that the analytical results presented in the report were determined using the EPA and American Society of Testing and Materials (ASTM) method.

Quality Assurance/Quality Control of the Collected Samples

As per the LANL Metals Report, three storm water duplicate samples were collected from the Global Water automatic samplers. In addition, each duplicate sample was prepared from a different container than the original sample, resulting in some sediment settling that may not have been resuspended adequately when the containers were shaken.

The Report also states that all analytical laboratory results underwent validation by the EIM (Environmental Information Management) database that feeds information to Intellus automatic validation algorithm. Older data (pre-March 2012) were validated by Analytical Quality Associates, Inc. (AQA), an independent U.S. Department of Energy (DOE) contractor, in Albuquerque, New Mexico, following the guidelines in the DOE National Nuclear Security Administration Model Data Validation Procedure (DOE 2006, 213441) and U.S. Environmental Protection Agency (EPA) Contract Laboratory Program National Functional Guidelines for Data Review (EPA 2004, 213445; EPA 2004, 213446; EPA 2008, 213449).

EPA reviewed the dissolved metal concentrations measured from the urban storm runoff samples and the non-urban; non-laboratory influenced reference/background sites from the LANL Metals Report and compared the detected dissolved metal concentrations against the EPA approved 2013 New Mexico WQS. Based on the state's WQS standards, the maximum, mean, or 95% confidence level for the dissolved Aluminum, Cadmium, Copper, Gross Alpha, Thallium, and Zinc has reasonable potential to exceed the standards. Therefore, Table 2 clearly states that the urban runoff discharges from the Los Alamos contribute more than *de minimis* amounts of pollutants identified as the cause of impairment to a water body

**Table 2
EPA Analysis of LANL Metals Report Data**

Pollutants	Urban runoff metal Con.	Urban runoff metal Con.	95% confidence level (µg/L)	NMWQS (Hardness as CaCO ₃ dissolved (40mg/L)			Mean Background/ Reference area runoff metal Con.		Does Max, Mean, or 95% Confidence level from urban runoff exceed One or More NMWQS ?	Does Max, /Mean, or /95% Confidence level from Background/Reference runoff exceed One or More of the NMWQS	Total number of samples with pollutants detected	Number of samples with pollutant level exceeded the NMWQS	
				LW	WH	Aquatic Life	Max	Mean					
	Max	Mean				Acute	Chronic						
Aluminum, Total	22700	5179	17,700			975	391	116000	33888	Yes	No	51	41
Aluminum, Dissolved	309	98.98	245					2620	536.7	NO			
Arsenic total	7.3	3.183	5.32					24	7.85	No			
Arsenic, Dissolved	3.53	2.376	2.55	200		340	150	6.2	2.617	No	No		
Cadmium, Total	.495	.303	1.25					6.7	3.293	No			
Cadmium Dissolved	.894	.334	.36	50		.76	.23	.28	.28	Yes	No	53	7
Copper, Total	142	30.49	84					104	24.81		No		
Copper, Dissolved	31.8	10.17	32.3	500		6	4	4.1	1.72	Yes	No	54	47
Gross Alpha, Total ((pCi/L)	71	10.43	32.5	15		N/A	N/A	1090	288.4	Yes	Yes	32	5

Gross Alpha, Dissolved	n/a	n/a	n/a					n/a	n/a				
Mercury, Total	0.286	0.218	n/a	10				.21	.145				
Mercury, Dissolved	n/a	n/a	n/a			1.4	.77	n/a	n/a	No	No		
Nickel, Total	33.9	6.95	21.2					120	42.87				
Nickel, Dissolved	9.13	2.848	7.57			220	24	3.4	1.736	No	No		
Selenium, Total	n/a	n/a	n/a		5	20	5	4.8	2.45	No	No		
Selenium, Dissolved	1.68	1.68	n/a	50				n/a	n/a				
Thallium, Dissolved													
Zinc, Total	2290	450.6	1617					1150	240.4				
Zinc, Dissolved	882	181	1120	25000		70	53	170	11.9	Yes	Yes	53	49

Notes: Unit is µg/L unless otherwise indicated.

As noted, impairments in the 2014-2016 NMED 303(d) list are gross alpha, aluminum, copper, zinc, arsenic, selenium, mercury, Cadmium, Nickel and turbidity.

Appendix 5: EPA's response to comments

Comment #	Commenter	Comment	EPA's Preliminary Response
1	Los Alamos County	<p>Los Alamos does not meet the designation requirements of 40 C.F.R. § 122.26(a)(9)(i): Designation of an entity as a MS4, thus requiring a National Pollutant Discharge Elimination System (“NPDES”) permit, can occur in several different ways. First, and most commonly, an entity can be designated a MS4 pursuant to the federal Clean Water Act (33 U.S.C. §§ 1251 to 1388), and its ensuing regulations known as the “Phase I” and “Phase II” stormwater rules. The Phase I and II MS4 designations are based strictly on the population of a given area or its designation as an “urban area.” See 33 U.S.C. § 1342(p)(2)(A) -(E); see also 40 C.F.R. § 122.26(a)(9)(i)(A), 40 C.F.R. § 122.32(a)(1). An extremely rare and less common means to designate an entity as a MS4 is by petition to the Regional Administrator for MS4 coverage. See 40 C.F.R. § 122.26(a)(9)(i)(D). This second method is commonly called EPA’s “residual designation” authority. It is through this federal code provision and rule that the Regional Administrator now attempts to assert jurisdiction over the County and surrounding area; it is the exception, not the rule that is being applied. Without a rational and supportive basis that clearly identifies and finds that the County is the cause or is “significantly” contributing to the exceedances of the areas receiving waters and waters of the United States, the Regional Administrator’s proposed designation is in error. The County requests that the Regional Administrator specify and provide to the County the specific facts, evidence, or publicly adopted</p>	<p>The standard for residual designation is not “causing”, but “contributing” to a violation of water quality standards (WQS). See Clean Water Act (CWA) § 402(p)(2)(E), 40 CFR §§ 122.26(a)(9)(i)(D) and 122.26(f)(2). In making its designation decision, EPA is not asserting, nor is EPA required to prove, that the discharges being designated are the sole cause of violations of NM WQS.</p> <p>While the CWA and EPA’s stormwater regulations also provide for designation based on a finding that a discharge is a “significant contributor of pollutants to waters of the United States,” EPA did not base its determination on that basis, but rather on its finding that stormwater discharges from MS4s located in the portion of Los Alamos County within the Los Alamos Urban Cluster and on LANL property within Los Alamos County and Santa Fe County are contributing to violations of NM WQS. After concluding that the discharges at issue are contributing to violations of WQS, EPA was not required to make a specific determination on the level of contribution of pollutants, as no such requirement exists in the CWA or EPA’s regulations.</p> <p>As explained in detail in its <i>Designation Decision and Record of Decision in Response to Petition by Amigos Bravos for a Determination that Stormwater Discharges in Los Alamos County Contribute to Water Quality Standards Violations and Require a Clean Water Act Permit</i> (EPA’s Decision Document), EPA based its finding on all available information, including the State of New Mexico’s 2012, 2014, 2016, and 2018 Integrated Reports filed with and approved by EPA pursuant to CWA §§ 303(d) and 305(b), as well as additional sampling data provided by LANL, the State and the Petitioners. Data was available for 9 background (i.e., non-</p>

		<p>documents he used in reaching his designation decision including what standard of proof he applied in review of such data that lead to his preliminary decision to regulate the County under the residual designation rule of 33 U.S.C. § 1342(p)(2)(E) and 40 C.F.R. § 122.26(a)(9)(i).</p>	<p>urban) stormwater monitoring locations (page 4, Figure 2) and 14 urban stormwater monitoring locations (page 5, Figure 3) in Los Alamos County from LANL’s report entitled <i>Background Metals Concentrations and Radioactivity in Stormwater on the Pajarito Plateau, New Mexico</i> (“LANL Metals Report”).¹</p> <p>Information and data used for the designation decision are part of the administrative record and available as appendices to EPA’s Designation Document. EPA notes that Los Alamos County did not provide any discharge data of its own for consideration in the designation decision.</p> <p>While sampling data was not available for every stormwater discharge outfall, this is typical of monitoring data for municipal separate storm sewer systems (MS4s) across the nation. For permit applications for large and medium MS4s, which serve populations of 100,000 or more (compared to the 2010 Census Los Alamos Urban Cluster Population of 10,893), EPA’s regulations at 40 C.F.R. § 122.26(d)(2)(iii)(A) only require quantitative data from 5-10 outfalls as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system. While there is a limited data set from the stormwater discharges at issue here, that data set is larger than required under EPA’s permitting regulations for large and medium MS4s (much larger than the MS4s at issue here), and thus it is reasonable to consider the data representative of other stormwater discharges from these small MS4s.</p> <p>EPA provided Los Alamos County with the <i>Petition by Amigos Bravos for a Determination that Storm Water Discharges Contribute to Water Quality Violations in Los Alamos County</i> (“the Petition”) and access to all supporting documents at a meeting in</p>
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¹ *Los Alamos National Laboratory, Background Metals Concentrations and Radioactivity in Stormwater on the Pajarito Plateau, Northern New Mexico (April 2013) (LA-UR-13-22841) (LANL Metals Report). Available at: <https://permalink.lanl.gov/object/tr?what=info:lanl-repo/epr/ERID-239557>*

			<p>Los Alamos County on August 21, 2014. These documents, plus the 2014 New Mexico CWA §§ 303(d)/305(b) Integrated Report, were also included in the administrative record for the preliminary designation decision noticed in the Federal Register on March 17, 2015. On April 2, 2015, the County requested an extension of the comment period for an additional 60 days. EPA granted the request and extended the public comment period for the preliminary designation decision until June 15, 2015. See also Responses to Comments Nos. 10 and 11.</p>
2	Los Alamos County	<p>Los Alamos County is not an "Urbanized Area" : Title 40, Chapter 1, Part 122.26 of the code of federal regulations provides that discharges composed of entirely stormwater, that are not regulated by the Phase I stormwater regulations, would be required to obtain a NPDES Stormwater permit if: (1) the discharge is from a small MS4 required to be regulated by 40 C.F.R. § 123.324; (2) were a small construction activity; (3) is found that stormwater controls were needed to meet wasteload allocations of total maximum daily loads; or (4) the entity is found to be contributing to a violation of a water quality standard or is a "significant contributor of pollutants to waters of the United States. 40 C.F.R. § 122.26(a)(9)(i). Under 40 C.F.R. § 122.32(a), an entity is subject to regulation as a small MS4 if it is found that its system is "located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census." 40 C.F.R. §</p>	<p>EPA confirms that Los Alamos County does not contain any "urbanized areas" as defined by the Census Bureau in the 2010 Decennial Census. However, it is because the County does not contain any urbanized areas that EPA's residual designation authority under CWA § 402(p)(2)(E) and EPA's stormwater regulations at 40 CFR § 122.26(a)(9)(i)(D) are applicable. As discussed above and in EPA's Decision Document, the basis for EPA's designation is the finding that stormwater discharges from MS4s located in the portion of Los Alamos County within the Los Alamos Urban Cluster and on LANL property within Los Alamos County and Santa Fe County are contributing to violations of NM WQS. As noted in the comment, pursuant to 40 C.F.R. §§ 122.26 and 122.32(a), small MS4s in urbanized areas are automatically required to obtain NPDES permits. Thus, if Los Alamos County contained any "urbanized areas," small MS4s in those areas would already be required to obtain NPDES permit coverage pursuant to EPA's stormwater regulations (see 40 CFR § 122.32(a)). EPA's residual designation authority can be used to require permits for</p>

		<p>122.32(a)(1)(emphasis added). If only a portion of your system is in the urbanized area, only that part is or will be regulated. Id. (emphasis added). Note however that 40 C.F.R. § 122.32(a)(1) does not include the term “urbanized cluster” to establish jurisdiction; it mandates that EPA exclusively use “urbanized area”. See 40 C.F.R. § 122.32(a)(1). Areas not an urbanized area or within the area designated as one, are by the plain meaning excluded. Id.</p>	<p>discharges that were not automatically designated for NPDES permitting under 40 CFR §§ 122.26(a)(1) or 122.32(a), but are determined by the permitting authority to be contributing to a violation of WQS or to be a significant contributor of pollutants to waters of the US (or needed based on wasteload allocations in Total Maximum Daily Loads (TMDLs)).</p> <p>Despite the lack of “urbanized areas” as defined by the Census, Los Alamos County contains areas that are categorized as urban in nature under the 2010 Census. As discussed in EPA’s Decision Document, Los Alamos County has two designated “urban clusters” based on the results of the 2010 Census, the Los Alamos Urban Cluster and the White Rock Urban Cluster. A Census-designated “urban cluster” is similar to an “urbanized area” but contains less than 50,000 population and is not automatically designated as needing an NPDES permit.</p>
3	Los Alamos County	<p>No Total Maximum Daily Loads (TMDLs) apply or are effective within Los Alamos County: Another means to which the Regional Administrator can assert MS4 jurisdiction is where stormwater controls are necessary to meet wasteload allocations that are part of TMDLs that address the pollutant(s) of concern. 40 C.F.R. § 122.26(a)(9)(i)(C). The Regional Administrator, in his Designation Document, does not cite, list, or provide any local area TMDLs that would necessitate the installation of stormwater controls within the County. Thus, it would appear that the Regional Administrator cannot designate the County as a MS4 pursuant to this part of the code (40 C.F.R. § 122.26(a)(9)(i)(C)). The County would appreciate clarification that the Regional Administrator did not consider likely or future TMDLs in his consideration and proposed designation.</p>	<p>EPA confirms that no TMDLs have been approved for Los Alamos County as of the date of this decision. However, a finding that stormwater controls are necessary to meet wasteload allocations that are part of a TMDL addressing pollutants of concern under 40 C.F.R. § 122.26(a)(9)(i)(C) is not the basis for EPA’s final designation decision. As explained in detail in EPA’s Decision Document, EPA’s designation decision is based on EPA’s determination that stormwater discharges from MS4s located in the portion of Los Alamos County within the Los Alamos Urban Cluster and on LANL property within Los Alamos County and Santa Fe County are contributing to violations of NM WQS under CWA § 402(p)(2)(E) and EPA’s stormwater regulations at 40 CFR § 122.26(a)(9)(i)(D).</p>

4	Los Alamos County	<p>Los Alamos County does not Cause or Contribute to Exceedances of Water Quality Standards: The EPA Regional Administrator Fails to Use the NMED 303d/305b Reports to Establish Cause of Water Quality Exceedances. Designation Document, Section IV., page 10 (emphasis added). From this statement, it is clear that the EPA Regional Administrator only finds that there is some indication of cause as well as the finding that the County may have the potential to result in exceedances of water quality standards. The Regional Administrator then reviews and asserts that water quality in Los Alamos Canyon, Sandia Canyon, Mortandad Canyon, Pajarito Canyon, Canada del Buey, Pueblo Canyon, and a segment of the Rio Grande River between the Cochiti Reservoir to San Ildefonso Pueblo boundary has levels of pollutants far exceeding the State's water quality standards. Of these he notes, only the area in and around Pueblo Canyon was noted as being within the jurisdiction of the County. See Designation Document, pages 6-7. The Regional Administrator then states that the remainder of the impairments seemed to occur from discharges in and around LANL property. In both instances, the County is greatly concerned that neither statement is a conclusive determination or a factual finding of causation/contribution, as required by the Code of Federal Regulations; specifically, that it is in fact the County that is contributing to violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.</p>	<p>EPA's designation decision is based on EPA's determination pursuant to CWA § 402(p)(2)(E) and EPA's stormwater regulations at 40 CFR § 122.26(a)(9)(i)(D) that stormwater discharges from MS4s located in the portion of Los Alamos County within the Los Alamos Urban Cluster and on LANL property within Los Alamos County and Santa Fe County are contributing to violations of NM WQS. As explained in detail in EPA's Decision Document, after reviewing all available information, including the State's CWA §§ 303(d)/305(b) Integrated Reports dating back to 2012, EPA found that at least some of the stormwater discharges from LANL and the Los Alamos Urban Cluster are to receiving waters listed as impaired on the State's CWA § 303(d) list of impaired waters. EPA further found the presence of pollutants associated with those impairments above the applicable WQS in stormwater discharges from MS4s located in the portion of Los Alamos County within the Los Alamos Urban Cluster as defined by the 2010 Decennial Census and on LANL property located within Los Alamos County and Sante Fe County, NM. Based on this evidence, EPA determined that stormwater discharges from Los Alamos County are contributing to violations of NM WQS. See also Responses to Comments Nos. 8 and 9 and EPA's Decision Document.</p>
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5.	<p>The County would appreciate clarification on why the Regional Administrator fails to use the most recently EPA approved and publicly adopted NMED 303d/305b Report, or at least the prior EPA approved 303d report, both of which have been publicly issued, received public comment and input, and was adopted at a public hearing, instead of the two third-party (LANL) non-publicly adopted documents.</p> <p>It is only from such public processes of comment and hearing that such documents can be assured of fairness and a provision of procedural due process in their application. Facially, it appears that the EPA Regional Administrator dismisses the NMED identification of the potential sources of water quality problems as "unknown" and favors secondary and unverified data sources to support his conclusion that it is the County that is the cause or contributor to exceedances of area water quality standards. Further, the Regional Administrator seems to ignore the clear and causal linkage between the NMED reported downstream water quality impairments (e.g., polychlorinated biphenyls ("PCBs"), gross-alpha, zinc, aluminum, mercury, nickel, copper, etc.) to the numerous and reported LANL Industrial Site ("IP"). Armed with such uncontroverted evidence that LANL's legacy waste is the most likely source and is contributing to exceedances of water quality standards, blame assessed to County operations and areas is misplaced and unfounded.</p>	<p>As discussed in detail in EPA's Decision Document, EPA relied on information contained in the State of New Mexico's §§ 303(d)/305(b) Integrated Reports dating back to 2012. At the time of EPA's preliminary designation, only the 2012-2014 Integrated Report was approved and available for review. However, since then, the State has finalized and EPA has approved New Mexico's 2014-2016, 2016-2018 and 2018-2020 §§ 303(d)/305(b) Integrated Reports. EPA has included the updated information from these reports in making its final designation decision.</p> <p>EPA has discussed its findings based on the information in the State's Integrated Reports at length in its Decision Document (See Part III.A of the Decision Document). EPA noted that starting with the 2014-2016 303(d)/305(b) Integrated Report, the NMED Surface Water Quality Bureau (SWQB) changed how probable sources were treated state-wide and removed previously reported probable source lists from the 2014-2016 303(d)/305(b) Integrated Report. Instead the State began using "Source Unknown" for all impairments unless the probable source(s) has (have) been established as part of the TMDL process. In the 2014-2016 Integrated Report,² NMED stated that "[t]he approach for identifying 'Probable Sources of Impairment' was modified by the SWQB starting with the 2012 listing cycle. Any new impairment listings are assigned a Probable Source of 'Source Unknown.' For the 2014 listing cycle, SWQB removed previously-reported non-TMDL Probable Source lists from the Report List, and replaced them with 'Source Unknown' for consistency throughout the list with respect to this approach." NM 2014-2016 303(d)/305(b) Integrated Report, page 56.</p> <p>NMED's policy decision to no longer include probable sources of impairment on CWA §§ 303d/305b Integrated Reports (and to</p>
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² 2014-2016 State of New Mexico Integrated CWA §303(d)/§305(b) Report. Available at: <https://www.env.nm.gov/wp-content/uploads/sites/25/2019/10/2014-2016NMReport.pdf>

			remove already listed sources for consistency) does not mean that any particular source has been ruled out. EPA's determination that discharges are contributing to WQS violations is based on an independent analysis of actual stormwater characterization data and receiving water impairment lists rather than on the probable source listings in older NMED CWA §§ 303d/305b Integrated Reports.
6	Los Alamos County	<p>Los Alamos County does not discharge to waters of the United States.</p> <p>For the Regional Administrator to assert jurisdiction over the County, he must also find that the County contributes or discharges pollutants from its stormwater conveyance system into "waters of the United States." See generally <i>U.S. v. Riverside Bayview</i>, 474 U.S. 121 (1985); <i>Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers</i>, 531 U.S. 159 (2001); <i>Rapanos v. United States</i>, 547 U.S. 715 (2006). The County contends that any discharge from its previous areas do not discharge into waters of the United States, but instead discharges to waters of the State of New Mexico. The U.S. Supreme Court in <i>Rapanos</i> found that the first test to determine whether a discharge was to waters of the United States was to look to the water in question. According to both Justice Kennedy and Justice Scalia, their question water(s) must first be an <i>interstate water</i></p>	EPA disagrees with the commenter's assertions. The information available to EPA demonstrates that stormwater from Los Alamos County flows and conveys pollutants to the Rio Grande, which is a traditional navigable water and thus a water of the United States under the CWA and federal regulations. See e.g., Appendix 1, Figure 1. See also LAN's PCB and Metals Reports. The fact that stormwater from Los Alamos County flows to the Rio Grande is supported by NMED's October 18, 2019 letter to EPA in support of this designation. That letter states that stormwater studies conducted by both LANL and NMED "confirm that elevated levels of metals and PCBs are contained in urban stormwater leaving the impervious areas of the Lab and the County. As these areas discharge to what later becomes a drinking water source for irrigation uses along the Rio Grande, NMED underscores the importance of this designation to assist in the protection of human health and the environment. Letter dated October 18, 2019 from James C. Kenney, Cabinet Secretary, NMED to Ken McQueen, Regional Administrator, USEPA Region 6, included in Appendix 3.

	<p>that is <i>navigable</i> or <i>reasonably susceptible to navigation</i> or be directly “<i>adjacent</i>” to an interstate waters. See <i>Rapanos</i>, 547 U.S. 780; see also <i>Riverside Bayview</i>, 474 U.S. 121, 133 (1985) (<i>emphasis added</i>). Next, according to the plurality’s opinion, there must be a permanence and direct or visible connection of the jurisdictional water to the adjacent water or wetland. In Justice Kennedy’s concurring opinion, he believed that the more appropriate test was, if not directly “adjacent” to or having a visible connection to the navigable water, the adjacent water had to have a “substantial nexus” to the jurisdictional water. <i>Rapanos</i>, 547 U.S. at 780, citing <i>SWANCC</i>, 531 U.S. 159, 167.</p> <p>The County would appreciate the EPA Regional Administrator’s discussion and clarification of how the determination was made that the “discharges from the County’s jurisdictional areas enter or reach navigable, or adjacent tributaries to, waters of the United States. Attached hereto as Exhibit D, are Google Earth© maps showing the various discharge paths of stormwater through area canyons. The County asserts that its potential discharges from the five mesa tops at the Los Alamos townsite, as well as the discharges from the developed areas of the White Rock townsite, would be into dry canyons and related arroyos thus not into waters of the U.S. Such dry ephemeral canyons are not federal jurisdictional waters. See Exhibits D-1 through D-9. From these photos, as well as knowledge of the local environment, it is more than evident that these waters are not navigable or easily susceptible to navigation and are not “adjacent” to any such waters.</p>	<p>The Buckman Direct Diversion Project (BDD), a joint regional project of the City of Santa Fe and Santa Fe County, submitted a letter to the Governor of New Mexico and NMED expressing concern over pollutants in stormwater discharges flowing to the Rio Grande and the negative impacts of these discharges (“BDD letter”).³ In that letter, representatives of the City and the County state that the BDD is located on the Rio Grande “downstream of the Cities of Espanola and Los Alamos as well as a portion of Los Alamos National Laboratory that is in the LA/Pueblo canyon watershed. Due to its location on the Rio Grande the BDD has unique concerns regarding the water quality of the Rio Grande and runoff coming from the Pajarito Plateau, where the City of Los Alamos and the Los Alamos National Laboratory (LANL) are located.” BDD letter, page 1. The BDD letter states that because stormwater flows from Los Alamos County to the Rio Grande and because the BDD diverts water from the Rio Grande for use as drinking water for the Cities of Santa Fe and Albuquerque, “the BDD has had to cease diversions when it received notification that potentially contaminated surface water from the Pajarito Plateau canyons would reach the Rio Grande upstream of the BDD.” BDD letter, page 2.</p>
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³ <https://bddproject.org/wp-content/uploads/2019/07/2019-06-07-BDD-Study-Session-Follow-Up-Letter-Items-2-and-12-to-MLG-on-letterhead.pdf>

	<p>As shown on Exhibits D-1 through D-9, all area waterways are ephemeral waters; that is they flow only through the direct influence of precipitation. The average 24-hour 10-year rain event is only 2.48 inches of precipitation, therefore these canyons and arroyos would unlikely reach the level of having a “substantial nexus” (even if found to be “adjacent”) to any downstream jurisdictional receiving water(s). See NOAA Atlas 14 Point Precipitation Frequency Estimates: NM.19 None of this leads to a rational conclusion that such potential discharges are adjacent to or have substantial nexus to a required jurisdictional water.</p>	
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7	Los Alamos County	<p>Use of 3rd Party Unproved Data over NMED and EPA Approved and Accepted Data. The County is gravely concerned over the Regional Administrator's use of the two LANL reports in reaching and making his Designation that it is the County that is the cause of PCB and water quality impairments. In review of the two LANL documents used by the Regional Administrator, the County has several important concerns that it anticipates that the Regional Administrator will address in his response to this comment. The first issue centers on the Regional Administrator's use of LANL's PCB report as his basis for finding that it is the County that is the source of PCB water quality exceedances.</p>	<p>In making its designation decision, EPA reviewed all available information, including LANL's Report entitled <i>Polychlorinated Biphenyls in Precipitation and Stormwater within the Upper Rio Grande Watershed</i>⁴ ("LANL PCB Report"). However, in its review of this report, EPA did not rely on LANL's conclusions, but instead performed an independent analysis of the data contained in the report.</p> <p>The LANL PCB Report presents baseline, base-flow, and storm-flow concentrations of polychlorinated biphenyls (PCBs) in certain surface waters located in the upper Rio Grande watershed and in areas in and around LANL as part of a cooperative investigation by the U.S. Department of Energy (DOE), NMED and LANL. PCB concentrations were measured using a high-precision analytical method (U.S. Environmental Protection Agency Method 1668A) that is capable of measuring concentrations as low as a few parts per quadrillion. The results were statistically reviewed to identify any anomalous contamination present in the stormwater discharges. The concentrations were then compared with NM WQS to gauge the magnitude of baseline allowable PCB concentrations in surface waters.</p> <p>The commenter did not provide any specific evidence that the data contained in the LANL PCB Report, much of which was collected by or in cooperation with NMED, was not of sufficient quality for EPA to use in making its decision. The data was QA/QC'd by an independent DOE contractor in accordance with guidelines established by DOE and EPA. (Methodology and QA/QC procedures are provided in Part 3 of the LANL PCB Report). For the reasons discussed above, EPA considered the data from the Report to be of sufficient quality for use in supporting a conclusion that stormwater discharges from LANL and the Los Alamos Urban</p>
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⁴ *Los Alamos National Laboratory, Polychlorinated Biphenyls in Precipitation and Stormwater within the Upper Rio Grande Watershed 2 (May 2012) (LA-UR-12-1081) (PCB Report). Available at: <https://permalink.lanl.gov/object/tr?what=info:lanl-repo/epr/ERID-219767>*

Cluster contain concentrations of PCBs that are contributing to violations of NM WQS.

8	Los Alamos County	<p>The County is concerned that the Regional Administrator inaccurately uses LANL's metals baseline report to find that the County is the cause of metal (aluminum, copper, gross alpha, mercury, nickel, etc.) water quality exceedances.</p> <p>The County states the Regional Administrator found "[a] Laboratory study of metals contamination in storm water runoff from urban areas at LANL and the Los Alamos Townsite found exceedances of New Mexico water quality criteria for cadmium, copper, and zinc.... In addition, the LANL metals report demonstrated that values for copper, zinc and nickel in urban storm water runoff in Los Alamos County substantially exceeded non-urban influenced Pajarito Plateau storm water concentrations." <i>Preliminary Designation Document</i>, Section II. C., page 8. The County is concerned that the Regional Administrator is extrapolating data intended for one purpose that of setting a regional baseline value, for a contrary purpose, for that of finding the source or cause of the contamination. The County would appreciate the Regional Administrator's methods and values he used or considered in review of this report as related to his final determination that the County's storm drains are causing or significantly contributing to metal water quality impairments.</p>	<p>EPA's designation decision is not based on a finding that stormwater discharges from Los Alamos County are the sole cause of violations of NM WQS, but rather that those discharges are contributing to WQS violations. See Response to Comment No. 1. In addition, although EPA relied on information in LANL's Metals Report, EPA did not rely on LANL's conclusions, but instead performed an independent analysis of the data contained in the report.</p> <p>LANL's Metal Report was designed to study the chemical composition of stormwater runoff in developed and undeveloped areas at LANL and the Los Alamos County Townsite. LANL collected samples from non-urban, non-laboratory influenced reference sites, as well as from sites representing runoff from the urbanized areas of the Los Alamos Townsite and developed landscapes within LANL property. The stormwater samples collected in the vicinity of the Townsite and urbanized areas of LANL property were used to measure metals concentrations and radioactivity in locations representing stormwater runoff from urban environments on the Pajarito Plateau. According to the LANL's Metal Report, a majority of these samples were of stormwater from housing developments, schools, and a golf course. As with the data in the LANL PCB Report, the data in the LANL Metals Report was QA/QC'd by an independent DOE contractor in accordance with guidelines established by DOE and EPA. (Methodology and QA/QC procedures are provided in Part 3 of the LANL Metals Report) A summary of dissolved metal concentrations measured from the urban stormwater samples is presented in Table 11 in the LANL Metals Report.</p> <p>EPA compared the dissolved metal concentrations from Table 11 against NM WQS and determined that urban stormwater discharges from the Los Alamos Townsite and urbanized areas of LANL property are contributing to violations of NM WQS for dissolved aluminum, copper, thallium and zinc.</p>
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9	Los Alamos County	<p>EPA Regional Administrator uses the LANL PCB Report to Find the County as the Cause of PCB Exceedances: Understanding the worldwide volatilization of PCB material, the County is concerned over how it will, if ever, meet stormwater quality criteria requirements for PCB impairments. Further, the County is deeply concerned it will enter into a cycle where it will forever be required to clean up worldwide legacy PCB wastes including the nonstop precipitation of PCBs onto County jurisdictional areas. The County, with less than 11,000 people, simply cannot bear such enormous and never-ending costs. The County would appreciate the Regional Administrators guidance on the specific data used to determine that the County was the genuine cause or contributor to area PCB impairments. Additionally, the County would request clarification on what the Regional Administrator envisions as related to how MS4 activities and best management practices could ever remove or treat PCB pollutants to the NMED State water quality standard of ≤ 0.64 ng/L for total PCBs, when, as reported in the LANL PCB Report, the median or average rain event at the Los Alamos Airport shows an average value of 0.14 ng/L of PCB deposition. With an average of 84 rain events per year, over 11.76 ng of PCB's could accumulate yearly throughout County areas. These levels of PCBs would be from areas outside and unknown to the County and to which the County would be required to address through some form of best management controls. Simply stated, the County's population of less than 11,000 would be unendingly charged with the cleanup of worldwide PCB legacy waste to which the County did not cause or contribute to. The County would also appreciate an explanation of why PCB wastes are not resolved through other EPA environmental programs such as the Resource Conservation and Recovery Act ("RCRA") or Toxic Substance Control Act ("TSCA")</p>	<p>EPA's designation decision is not based on a finding that stormwater discharges from Los Alamos County are the sole cause of violations of NM WQS, but instead that those discharges are contributing to WQS violations. See Response to Comment No. 1.</p> <p>As discussed in Response to Comment No. 7, EPA analyzed all available information, including an independent analysis of the data in the LANL PCB Report, and determined that stormwater discharges from LANL property and the Los Alamos Urban Cluster contain concentrations of PCBs that are contributing to violations of NM WQS.</p> <p>Although not necessary for EPA's determination that stormwater discharges from LANL property and the Los Alamos Urban Cluster are contributing to violations of NM WQS, EPA compared PCB concentrations in stormwater to background values to further its understanding of urban stormwater discharges from the County. See Appendix 4. EPA found that concentrations of PCBs from urban stormwater exceeded concentrations in samples from "background" locations, indicating that urban stormwater in the area has PCB levels exceeding what can be attributed to widespread atmospheric deposition from offsite sources. Section 4.5.1 of the LANL PCB report provides mean (1.56 ng/l) and maximum (11.6 ng/l) total PCB concentrations for background reference sites on the Pajarito Plateau. These values could be assumed to be the result of atmospheric deposition. However, Part 4.6 of the LANL PCB report, which was based on a combination of LANL and NMED data, presents mean (27.7 ng/l) and maximum (144 ng/l) total PCB concentrations for stormwater from sites including both the townsite and LANL administration office area exceeding values from the background reference sites. The LANL and NMED PCB data found in the LANL PCB report indicates that urban stormwater, including stormwater from the urban portions of LANL and the Los Alamos Urban Cluster, contains PCBs in concentrations exceeding that in undeveloped reference sites.</p>
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	<p>requirements. EPA Regional Administrator's use of LANL's "Background Metals Concentrations and Radioactivity in Storm Water on the Pajarito Plateau, Northern New Mexico" Report to find Cause: The County would appreciate the Regional Administrator's methods and values he used or considered in review of this report as related to his final determination that the County's storm drains are causing or significantly contributing to metal water quality impairments.</p>	<p>MS4 permittees may not eliminate PCB water quality standards impairments in the receiving streams. Section 402(p)(3)(B) of the CWA requires MS4s permittees to effectively prohibit non-stormwater discharges into their storm sewers and to implement controls to reduce the discharge of pollutants to the Maximum Extent Practicable (MEP), including management practices, control techniques and system, design and engineering methods, and to implement such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. Under EPA's stormwater regulations at 40 CFR §§ 122.33 and 122.34, small MS4 permittees are required to develop, implement and enforce a stormwater management program (SWMP), which describes how the MS4 will reduce the discharge of pollutants from its sewer system and address six (6) minimum control measures (MCMs): Public Education & Outreach; Public Participation/Involvement; Illicit Discharge Detection & Elimination; Construction Site Runoff Control; Post-Construction Runoff Control; and Pollution Prevention/Good Housekeeping. See 40 C.F.R. § 122.34(b). Each MCM requires implementation of best management practices (BMPs) to meet measurable goals according to an approved schedule. The goal is for designated small MS4s to prevent or minimize their contributions to water quality impairments through implementation of effective BMPs to address the six MCMs and other measures as appropriate to protect water quality.</p> <p>Although the content of any future permit(s) issued as a result of EPA's designation decision is outside the scope of this designation decision, EPA expects that initial efforts regarding PCB controls would focus on identifying sources that are contributing more than would be associated with atmospheric deposition from offsite sources and requiring MS4s to compel operators of such discharges into the MS4 to address the source. These cleanups of third-party sites could involve the RCRA or Superfund programs. EPA's Middle Rio Grande MS4 permit No. NMR04A000, issued December 22, 2014, provides an example of how such a permit could look. As stated during the public meeting on its preliminary</p>
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			<p>designation decision, EPA recognizes the unique stormwater permitting challenges presented by the Los Alamos County area. EPA is committed to involving stakeholders in the permit development process to ensure issues of concern to them are considered and addressed.</p>
10	Los Alamos County	<p>Use of the Factors in 40 C.F.R. § 123.35(b) by the Regional Administrator is Inappropriate : The County is concerned that the Regional Administrator also improperly considered certain regulatory factors found in 40 C.F.R. § 123.35(b)(1).¹⁷ It is critical to note that this section and subsection of the federal code relates to only what state program authorities should “develop” in their state run small MS4 designation programs. In New Mexico, the EPA manages the National Pollutant Discharge Elimination System (“NPDES”) permitting program; there is no state level NPDES permitting authority. The title of the code part is “As the NPDES Permitting Authority for regulated small MS4s, what is my role?” 40 C.F.R. §123.35 (2015).¹⁸ The County would request clarification on why the Regional Administrator used federal rules designed for state implementation programs and submissions in his evaluation and finding that the County was a cause or contributor to water quality impairments.</p>	<p>As explained in detail in EPA’s Decision Document, EPA’s designation decision is based on EPA’s determination that stormwater discharges from MS4s located in the portion of Los Alamos County within the Los Alamos Urban Cluster and on LANL property within Los Alamos County and Santa Fe County are contributing to violations of NM WQS under CWA § 402(p)(2)(E) and EPA’s stormwater regulations at 40 CFR § 122.26(a)(9)(i)(D). To clarify and expand its understanding of the nature of stormwater discharges from LANL and the urban portions of Los Alamos County in order to make a final designation decision, EPA analyzed whether the factors at 40 CFR § 123.35(b)(1)(ii) (discharge to sensitive waters, high growth or growth potential, high population density, contiguity to an urbanized area, significant contributor of pollutants to WOTUS, and ineffective protection of water quality by other programs) were relevant to its determination. However, EPA determined that these factors were not relevant because they apply when analyzing whether a stormwater discharge is a significant contributor of pollutants to WOTUS (as opposed to whether a stormwater discharge contributes to a WQS violation). Since that was not the basis for designation that EPA was analyzing here, EPA did not consider the factors at 40 CFR § 123.35(b)(1)(ii) in making its final designation decision.</p>

11	LANS and DOE	<p>Los Alamos National Security, LLC (LANS) and the United States Department of Energy (DOE) do not agree with the proposed boundary in EPA's preliminary designation because The MS4 permit boundary should not encompass all of Los Alamos National Laboratory (LANL) but should focus on urban areas within LANL. The majority of the area within the LANL boundary is undeveloped. Of the approximately 39 mi² area within LANL, less than 5% (1.62 mi²) is urban (buildings, roads, parking lots). Therefore, since the MS4 designation is based on impacts of urban storm water runoff, the boundary should be focused on capturing urban areas and not all locations within LANL.</p>	<p>While some portions of the designated areas may be currently undeveloped, in terms of scope the key for EPA is whether the area's stormwater is served by an MS4. If so, then it falls within the designation, but if not, then it does not. Residual designation authority allows the permitting authority to require permits where discharges are contributing to violations of WQS or are significant contributors of pollutants to waters of the United States but are not already required to obtain permit coverage under EPA's stormwater regulations.</p> <p>In this designation action, EPA has determined to designate only discharges from MS4s within the Los Alamos Urban Cluster and LANL property. Consequently, NPDES permit(s) issued as a result of this designation will impose conditions only on discharges from MS4s. Stormwater discharges from other areas would not be subject to NPDES permit requirements unless future development occurs and MS4 service expands.</p> <p>This designation does not affect or involve stormwater discharges under LANL's individual industrial stormwater permit or EPA's Multi-Sector General Permit (MSGP).</p>
12	LANS and DOE	<p>LANS and DOE do not agree with the proposed boundary in EPA's preliminary designation because The MS4 permit boundary should not be based on ensuring inclusion of all the NPDES Individual Permit (IP) (Permit No. NM0030759) sites, which would necessitate the full LANL boundary. Therefore, LANS and DOE have also included a modified boundary proposal to more accurately capture urban areas.</p>	<p>See Response to Comment No. 11.</p>
13	LANS and DOE	<p>Proposed Boundary: LANS and DOE propose that the most appropriate and representative LANL designation/boundary for the MS4 permit would be all areas of LANL located immediately adjacent to and north of Pajarito Road. Pajarito Road extends northwest from State Road 4, adjacent to the community of White Rock, to Technical Area 3, which</p>	<p>See Response to Comments No. 11.</p>

		is the largest urbanized portion of LANL (see Enclosure 2 for details)	
14	NMED	<p>By letter dated October 18, 2019, NMED stated that it supports the proposed MS4 designation for Los Alamos County. Designation of this particular area under the stormwater permitting program would provide, among other benefits, a comprehensive mechanism to coordinate efforts to address contaminated stormwater. Urban stormwater studies have been conducted by both Los Alamos National Laboratory and NMED. These studies confirm that elevated levels of metals and PCBs are contained in urban stormwater leaving the impervious areas of the Lab and the County. As these areas discharge to what later becomes a drinking water source for both the City of Santa Fe and the City of Albuquerque, in addition to a source for irrigation uses along the Rio Grande, NMED underscores the importance of this designation to assist in the protection of human health and the environment.</p> <p>Stormwater is a significant source contributing to the continued water quality impairments documented in NMED's 2018-2020 CWA Section 303(d) List of Impaired Waters. NMED agrees with EPA's Preliminary Determination that the regulatory criteria for making a residual designation are met in this case.</p> <p>NMED further stated that the agency's October 18, 2019, letter supersedes the letter dated June 15, 2015, conveying NMED's prior position on the MS4 designation.</p>	NMED's support of EPA's designation decision is noted. Because NMED's October 18, 2019, letter supersedes and replaces the agency's June 15, 2015, letter, EPA is not responding to NMED's comments from the earlier letter.

15	NMDOT	NMDOT strongly disagrees with EPA's proposed extents for the proposed Los Alamos MS4. NMDOT concurs with both Los Alamos National Laboratory (LANL) and Los Alamos County (LAC) that the extent of the proposed Los Alamos MS4 should be limited to the areas of urbanized development within both LANL and LAC. The intent of the MS4 program is to address stormwater quality issues from urbanized areas, as runoff is conveyed through municipal separate storm sewer systems. Including non-urbanized areas which have no storm sewer systems is beyond the scope of the program and unnecessarily burdensome to the permittees.	As noted in Response to Comment No. 11, EPA is designating only discharges from MS4s located within the Los Alamos Urban Cluster and LANL property. Consequently, NPDES permit(s) issued as a result of this designation will impose conditions only related to discharges from MS4s. See also Response to Comment No. 11.
16	NMDOT	Will EPA be providing an estimation of the 90th or 80th percentile storm event discharge volumes for compliance with the Post-Construction Stormwater Management in New Development and Redevelopment BMP? Will the alternative Option A and Option B described in the MIDDLE RIO GRANDE WATERSHED BASED MUNICIPAL SEPARATE STORM SEWERSYSTEM PERMIT BE allowed?	The content of any future permit(s) issued as a result of EPA's designation decision is outside the scope of the designation decision. No proposed or final permitting decisions have been made at this time. EPA intends to meet with stakeholders during the permit development process to ensure issues driven by the unique circumstances in Los Alamos County are considered in the permitting process.
17	NMDOT	Regarding the Illicit Discharge Detection and Elimination (IDDE) portion of the Permit, as the EPA is aware, NMDOT has no authority to enact or enforcement or an ordinance of any kind. Additionally, we have no authority or ability to inspect or enforce compliance with any illicit discharges which originate outside NMDOT Right-of-Way. Should an illicit discharge be detected, NMDOT will notify NMED, EPA, and either LANL or LAC (depending which entity has jurisdiction over the property from which the discharge is coming).	The content of any future permit(s) issued as a result of EPA's designation decision is outside the scope of the designation decision. See also Response to Comment No. 16.

18	Communities for Clean Water (CCW)	<p>Communities for Clean Water (CCW) is a network of organizations whose mission is to ensure that community waters impacted by Los Alamos National Laboratory (LANL) are kept safe for drinking, agriculture, sacred ceremonies, and a sustainable future. Our growing network includes Concerned Citizens for Nuclear Safety (CCNS), Amigos Bravos, Honor Our Pueblo Existence (HOPE), the New Mexico Acequia Association, Partnership for Earth Spirituality, and Tewa Women United. CCW brings together the vast expertise and commitment of widely respected and well-tested advocacy groups from culturally diverse backgrounds. Collectively CCW represents the only community-based coalition in Northern New Mexico that has been monitoring and advocating for better public water policy to address the toxic threats from LANL to the Pajarito Plateau and the Rio Grande. As the sacred homeland of the Pueblo Peoples it is vitally important that clean water be protected on the Pajarito Plateau. We write today to give our support to the Environmental Protection Agency's (EPA's) March 6th, 2015 Preliminary Determination that Discharges from Municipal Separate Storm Sewer Systems (MS4s) at LANL and Los Alamos County Result in Exceedances of Water Quality Standards and Require Clean Water Act Permit Coverage (Preliminary Determination).</p> <p>CCW has been working as a coalition to address contaminated storm water runoff from LANL and Los Alamos County since 2006. While we have been encouraged by some progress made under the Individual Industrial Stormwater Permit to address contaminated storm water runoff, we are concerned by the overwhelming data and evidence that indicates that storm water contamination from urban sources on the Pajarito Plateau is contributing to violations of</p>	CCW's support of EPA's designation decision is noted.
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		water quality standards. We are encouraged that EPA is following through on its the responsibility to ensure that the waters of the Pajarito Plateau and the Rio Grande are protected by issuing this Preliminary Determination.	
19	CCW	CCW calls on EPA to include the small urbanized area in White Rock that has been left out of the EPA's proposed coverage area in the final MS4 coverage area. This subdivision is close to the Mortandad and White Rock canyons and therefore has the potential to release storm water discharges directly into the Pajarito Plateau tributaries as well as directly into the Rio Grande. To protect water quality this area should be included in the final coverage area.	Although stormwater discharges from MS4s within the White Rock Urban Cluster were included in EPA's preliminary designation, EPA reevaluated the available data based on comments received and changed its determination with regard to White Rock. As explained in detail in EPA's Decision Document, EPA reviewed NM's CWA §§ 303(d)/305(b) Integrated Reports dating back to 2012 and found that although there are impairments listed for the Rio Grande, which stormwater discharges from the White Rock Urban Cluster ultimately reach, the immediate receiving waters at White Rock are not listed as impaired for any stormwater-related pollutant. In addition, no discharge data was available for stormwater discharges from the White Rock Urban Cluster. As a result, EPA determined that more data about the stormwater discharges from the White Rock Urban Cluster are needed to establish that those discharges are contributing to WQS violations. Thus, EPA decided not to designate discharges from White Rock at this time.
20	CCW	Given the nature of the pollution and the extensive monitoring infrastructure already in place at LANL, CCW calls on EPA to move forward expeditiously with issuing an Individual MS4 permit that includes rigorous monitoring and treatment requirements. Coverage under the General Small MS4 Permit will not be adequate to address the level of contaminants found in the urban storm water discharges coming off of LANL and Los Alamos County's urbanized areas. Site-specific treatment and monitoring requirements are necessary to control these contaminated storm water discharges.	The type (individual vs. general) and content of any future permit(s) issued as a result of EPA's designation decision is outside the scope of the designation decision. See Response to Comment No. 16.

21	Amigos Bravos	Amigos Bravos writes in support of EPA's preliminary designation of MS4s on Los Alamos National Laboratory (LANL) property and urban areas of Los Alamos County. This preliminary designation, made in response to our June 30th, 2014 petition, is a critical first step in protecting the Rio Grande and its tributaries on the Pajarito Plateau from pollution from urban stormwater discharges at LANL and in Los Alamos County. We urge you to finalize this designation and issue a NPDES permit as quickly as possible.	Amigos Bravos' support of EPA's designation decision is noted.
22	Amigos Bravos	Amigos Bravos supports EPA's proposed coverage area with a minor exception: the developed area south of the area proposed for coverage in the community of White Rock should also be included in the designation. This area shows up very clearly in EPA's map of proposed areas to be covered as a distinct cluster of development. Although this area may be slightly less dense than other proposed portions of Los Alamos County, it is contiguous to both the proposed areas for coverage in White Rock as well as to LANL and is considerably more dense in population than other areas in Los Alamos County. In addition, most of the urbanized areas within this portion of White Rock sit close to the edge of the canyons that flow directly into the Rio Grande. EPA should expand the area of coverage to include this developed area.	EPA does not agree with the commenter's request to designate the developed area south of the area of the community of White Rock initially proposed for coverage in EPA's preliminary designation. As with the White Rock Urban Cluster, EPA has determined that there is not enough data to conclude at this time that stormwater discharges from the area just south of the White Rock Urban Cluster are contributing to violations of NM WQS. As with the White Rock Urban Cluster, the immediate receiving waters for this area are not listed as impaired for any stormwater-related pollutant and there is no available stormwater discharge data. See also Responses to Comment Nos. 10 and 19.
23	Amigos Bravos	EPA's "Los Alamos County Preliminary Designation Document" does not include Amigos Bravos' Statement of Facts that was submitted as part of our petition, yet it does include LANL and Los Alamos County responses to this Statement of Facts. Amigos Bravos believes it is appropriate to include the full Statement of Facts document in the Preliminary Designation Document.	Amigos Bravos' Statement of Facts is incorporated by reference in Appendix 2 of EPA's Decision Document entitled "Petition and Supporting Documents."

24	Amigos Bravos	<p>Urban storm water pollution from LANL and Los Alamos County should be covered by an individual permit. An individual permit could provide for not only the needed monitoring but also for specific treatment options that are not available under the general small MS4 permit. Appropriate treatment options for Los Alamos could be similar to those proposed for the individual MS4 permit for Charles County, Maryland under which treatment of twenty percent of the County's impervious surface would be required by the end of the 5-year permit term (Reference Maryland Department of the Environment Draft National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System Permit 8 (June 18, 2014) (Draft permit for Charles County, Maryland. Permit No MD0068365, http://www.mde.state.md.us/programs/Water/StormwaterManagementProgram/Documents/Charles%20Permit%20tentative%20determination.pdf.)</p>	<p>The type (individual vs. general) and content of any future permit(s) issued as a result of EPA's designation decision is outside the scope of the designation decision. See Response to Comment No. 16.</p>
25	Comments of general support for designation from Citizens.	<p>39 Citizens provided comments to support EPA's preliminary designation document. These comments generally expressed concerns on impacts to water quality. (see attached)</p>	<p>These citizens' support of EPA's designation decision is noted.</p>
26	Comments of general opposition for designation from Citizens.	<p>1 Citizen provided comments opposing designation. This comments generally expressed concerns on costs of permit compliance to local citizens and businesses. (see attached)</p>	<p>The citizen's opposition to EPA's designation decision is noted. The cost of permit compliance is outside the scope of this designation decision, which is based on EPA's determination that stormwater discharges from MS4s located in the portion of Los Alamos County within the Los Alamos Urban Cluster and on LANL property within Los Alamos County and Santa Fe County are contributing to violations of NM WQS. However, EPA notes that the cost of permit compliance varies greatly and depends on many factors as the permittees develop their programs. In the past, for example, with EPA's general MS4 permit for the Albuquerque area, EPA has encouraged development of programs tailored to</p>

			<p>local needs, leveraging existing programs where possible, and cooperative programs for MS4 permittees in a regulated MS4 area as a means to minimize burdens.</p> <p>As noted in Response to Comment No. 16, EPA intends to meet with stakeholders during the permit development process to ensure issues driven by the unique circumstances in Los Alamos County are considered in the permitting process.</p>
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 Environmental Protection Agency
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ATTACHMENT 2. NMED Letter
Petition by the Inc. County of Los Alamos, NM



Michelle Lujan Grisham
Governor

Howie C. Morales
Lt. Governor

NEW MEXICO
ENVIRONMENT DEPARTMENT

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James C. Kenney
Cabinet Secretary

Jennifer J. Pruett
Deputy Secretary

October 18, 2019

Ken McQueen
Regional Administrator
USEPA Region 6
1201 Elm St.
Dallas, TX 75202

Re: Los Alamos Residual Designation Petition

Dear Regional Administrator McQueen:

The New Mexico Environment Department (NMED) supports the proposed MS4 designation for Los Alamos County. Designation of this particular area under the stormwater permitting program would provide, among other benefits, a comprehensive mechanism to coordinate efforts to address contaminated stormwater. Urban stormwater studies have been conducted by both Los Alamos National Laboratory and NMED. These studies confirm that elevated levels of metals and PCBs are contained in urban stormwater leaving the impervious areas of the Lab and the County. As these areas discharge to what later becomes a drinking water source for both the City of Santa Fe and the City of Albuquerque, in addition to a source for irrigation uses along the Rio Grande, NMED underscores the importance of this designation to assist in the protection of human health and the environment.

As noted in the Residual Designation Petition submitted to EPA by Amigos Bravos in 2014 and EPA's March 2015 Preliminary Determination (80 FR 13852), stormwater is a significant source contributing to the continued water quality impairments documented in NMED's 2018-2020 CWA Section 303(d) List of Impaired Waters. We agree with EPA's Preliminary Determination that the regulatory criteria for making a residual designation are met in this case (40 CFR 122.26). An updated list of the current impairments is included with this letter as Appendix A, which includes all Pajarito Plateau watersheds in addition to the Rio Grande below Los Alamos.

This letter supersedes the letter dated June 15, 2015, conveying NMED's prior position on the MS4 designation. If you require any further data or assistance, please do not hesitate to reach out to my staff in the Surface Water Quality Bureau. NMED looks forward to engaging with EPA Region 6 to continue strong protections for our precious water resources in New Mexico.

Sincerely,


James C. Kenney
Cabinet Secretary

ATTACHMENT 2. NMED Letter
Petition by the Inc. County of Los Alamos, NM

Cc: Charles Maguire, Director, Water Quality Protection Division, EPA Region 6
Rebecca Roose, Director, Water Protection Division, NMED

**ATTACHMENT 2. NMED Letter
Petition by the Inc. County of Los Alamos, NM**

Attachment A:

Water Quality Impairments from NMED's 2018-2020 CWA §303(d)/§305(b) Integrated List:

Segment	WQS Reference	Impairments	TMDL/4b
Acid Canyon (Pueblo to headwaters)	20.6.4.98 NMAC	Adjusted gross alpha, PCBs in water column, dissolved copper, TR aluminum	None
Bayo Canyon (San Ildefonso boundary to headwaters)	20.6.4.98 NMAC	Not assessed	None
DP Canyon (Los Alamos Canyon to LANL bnd)	20.6.4.128 NMAC	Adjusted gross alpha, PCBs in water column, TR aluminum	None
Graduation Canyon (Pueblo Canyon to headwaters)	20.6.4.98 NMAC	Dissolved copper, PCBs in water column	None
Guaje Canyon (San Ildefonso bnd to headwaters)	20.6.4.98 NMAC	Fully supporting	None
Kwage Canyon (Pueblo Canyon to headwaters)	20.6.4.98 NMAC	Not assessed	None
Los Alamos Canyon (DP Canyon to upper LANL bnd)	20.6.4.128 NMAC	PCB in water column, adjusted gross alpha, total mercury, total recoverable cyanide, total recoverable selenium	None
Los Alamos Canyon (Los Alamos Rsvr to headwaters)	20.6.4.127 NMAC	Fully supporting	None
Los Alamos Canyon (NM-4 to DP Canyon)	20.6.4.128 NMAC	Adjusted gross alpha, PCBs in water column, total recoverable aluminum, total recoverable cyanide, radium, total mercury	None
Los Alamos Canyon (San Ildefonso bnd to NM-4)	20.6.4.98 NMAC	Not assessed	None
Los Alamos Canyon (Upper LANL bnd to Los Alamos River)	20.6.4.98 NMAC	Not assessed	None
Pojoaque River (San Ildefonso bnd to Pojoaque bnd)	20.6.4.114 NMAC	PCBs in water column	None
Pueblo Canyon (Acid Canyon to headwaters)	20.6.4.98 NMAC	PCBs in water column, total recoverable aluminum, adjusted gross alpha, dissolved copper	None

**ATTACHMENT 2. NMED Letter
Petition by the Inc. County of Los Alamos, NM**

Pueblo Canyon (Los Alamos Canyon to Los Alamos WWTP)	20.6.4.98 NMAC	Adjusted gross alpha, PCBs in water column, total recoverable aluminum, total recoverable selenium	None
Pueblo Canyon (Los Alamos WWTP to Acid Canyon)	20.6.4.98 NMAC	PCBs in water column, adjusted gross alpha	None
Rendija Canyon (Guaje Canyon to headwaters)	20.6.4.98 NMAC	Not assessed	None
Rio Grande (Ohkay Owingeh bnd to Embudo Creek)	20.6.4.114 NMAC	PCB in fish tissue, turbidity	None
Rio Grande (Santa Clara Pueblo bnd to Ohkay Owingeh bnd)	20.6.4.114 NMAC	Turbidity, PCBs in fish tissue	None
South Fork Acid Canyon (Acid Canyon to headwaters)	20.6.4.98 NMAC	Adjusted gross alpha, PCBs in water column, dissolved copper	None
Walnut Canyon (Pueblo Canyon to headwaters)	20.6.4.98 NMAC	PCBs in water column, dissolved copper	None
Alamo Canyon (Rio Grande to headwaters)	20.6.4.121 NMAC	Not assessed	None
Ancho Canyon (North Fork to headwaters)	20.6.4.128 NMAC	PCBs in water column	None
Ancho Canyon (Rio Grande to North Fork Ancho)	20.6.4.128 NMAC	PCBs in water column, total mercury	None
Arroyo de la Delfe (Pajarito Canyon to headwaters)	20.6.4.128 NMAC	Adjusted gross alpha, total recoverable aluminum, dissolved copper, PCBs in water column	None
Canada del Buey (San Ildefonso Pueblo bnd to LANL bnd)	20.6.4.98 NMAC	Not assessed	None
Canada del Buey (within LANL)	20.6.4.128 NMAC	PCBs in water column, adjusted gross alpha	None
Canon de Valle (LANL gage E256 to Burning Ground Spg)	20.6.4.126 NMAC	PCBs in water column	None

**ATTACHMENT 2. NMED Letter
Petition by the Inc. County of Los Alamos, NM**

Canon de Valle (below LANL gage E256)	20.6.4.128 NMAC	Adjusted gross alpha	None
Canon de Valle (Upper LANL bnd to headwaters)	20.6.4.98 NMAC	PCBs in water column, adjusted gross alpha	None
Canon de Valle (within LANL above Burning Ground Spr)	20.6.4.128 NMAC	Not assessed	None
Chaquehui Canyon (within LANL)	20.6.4.128 NMAC	PCBs in water column	None
Fence Canyon (above Potrillo Canyon)	20.6.4.128 NMAC	Not assessed	None
Indio Canyon (above Water Canyon)	20.6.4.128 NMAC	Not assessed	None
Mortendad Canyon (within LANL)	20.6.4.128 NMAC	Adjusted gross alpha, total mercury, PCBs in water column, dissolved copper	None
North Fork Ancho Canyon (Ancho Canyon to headwaters)	20.6.4.128 NMAC	Adjusted gross alpha, PCBs in water column	None
Pajarito Canyon (Arroyo de la Delfe to Starmers Spring)	20.6.4.126 NMAC	Fully supporting	None
Pajarito Canyon (Rio Grande to LANL bnd)	20.6.4.98 NMAC	Fully supporting	None
Pajarito Canyon (Upper LANL bnd to headwaters)	20.6.4.99 NMAC	PCBs in water column, total recoverable aluminum, adjusted gross alpha, total recoverable cyanide, total mercury	None
Pajarito Canyon (within LANL above Starmers Gulch)	20.6.4.128 NMAC	Aluminum, adjusted gross alpha	None
Pajarito Canyon (within LANL below Arroyo de la Delfe)	20.6.4.128 NMAC	Aluminum, PCBs in water column	None
Potrillo Canyon (above Water Canyon)	20.6.4.128 NMAC	Adjusted gross alpha	None

**ATTACHMENT 2. NMED Letter
Petition by the Inc. County of Los Alamos, NM**

Rio Grande (Cochiti Reservoir to San Ildefonso bnd)	20.6.4.114 NMAC	Turbidity, PCBs in fish tissue, PCBs in water column, E. coli, adjusted gross alpha, dissolved aluminum, thallium, total recoverable selenium, total recoverable cyanide	None
Rito de los Frijoles (Rio Grande to Upper Crossing)	20.6.4.121 NMAC	DDT in fish tissue, total recoverable Aluminum	None
Rito de los Frijoles (Upper crossing to headwaters)	20.6.4.121 NMAC	DDT in fish tissue, total recoverable Aluminum	None
Sandia Canyon (Sigma Canyon to Outfall 001)	20.6.4.126 NMAC	Total recoverable aluminum, PCBs in water column, dissolved copper, temperature	None
Sandia Canyon (within LANL below Sigma Canyon)	20.6.4.128 NMAC	PCBs in water column, total recoverable aluminum, adjusted gross alpha, total mercury	None
Ten Site Canyon (Mortendad Canyon to headwaters)	20.6.4.128 NMAC	Adjusted gross alpha, PCBs in water column	None
Three Mile Canyon (Pajarito Canyon to headwaters)	20.6.4.128 NMAC	Adjusted gross alpha	None
Two Mile Canyon (Pajarito to headwaters)	20.6.4.128 NMAC	Adjusted gross alpha, PCBs in water column, total recoverable aluminum, dissolved copper	None
Water Canyon (Area A Canyon to NM 501)	20.6.4.126 NMAC	Fully supporting	None
Water Canyon (Rio Grande to lower LANL bnd)	20.6.4.98 NMAC	Not assessed	None
Water Canyon (Upper LANL bnd to headwaters)	20.6.4.98 NMAC	Total recoverable aluminum, total mercury	None
Water Canyon (within LANL below Area A Canyon)	20.6.4.128 NMAC	Total recoverable aluminum, PCBs in water column, adjusted gross alpha, total mercury	None

Attachment 3. BDD Letter (June 7, 2019)
Petition for Review by Inc. County of Los Alamos, NM



A joint regional project of the City of Santa Fe and Santa Fe County to build a reliable and sustainable water supply.

June 7, 2019

Michelle Lujan Grisham
Governor of the State of New Mexico
490 Old Santa Fe Trail Room 400
Santa Fe, NM 87501

James C. Kenney
Secretary, New Mexico Environment Department
Harold Runnels Building
1190 St. Francis Dr. Suite N4050
Santa Fe, NM 87505

Subject: Buckman Direct Diversion Project Board Water Quality Priorities

Dear Governor Lujan Grisham and Secretary Kenney:

The Buckman Direct Diversion Project (the “BDD”) is a joint water supply project of the City of Santa Fe and Santa Fe County. The BDD diverts its share of San Juan-Chama Project water and native pre-1907 New Mexico water rights from the Rio Grande and treats it to drinking water standards for delivery to the Santa Fe regional water customers. Physically, the BDD is located at the end of Buckman Road on the Rio Grande below Otowi gage and is downstream of the cities of Espanola and Los Alamos as well as a portion of Los Alamos National Laboratory that is in the LA/Pueblo canyon watershed. Due to its location on the Rio Grande the BDD has unique concerns regarding the water quality of the Rio Grande and runoff coming from the Pajarito Plateau, where the City of Los Alamos and the Los Alamos National Laboratory (LANL) are located.

Currently, the BDD relies on a combination of mechanisms to monitor and ensure the safety of the water quality of the surface waters of the Rio Grande and the water that is diverted by the BDD for production of drinking water. Among these mechanisms are the Order on Consent between Los Alamos National Laboratory and the New Mexico Environment Department, a Memorandum of Understanding between the BDD Board and Los Alamos National Laboratories (“BDDB-LANL MOU”) to monitor surface water flows from the LA/Pueblo canyon watershed which is known to contain legacy wastes; and Rio Grande water quality monitoring under the State’s water quality criteria for this stretch of the Rio Grande.



Attachment 3. BDD Letter (June 7, 2019)
Petition for Review by Inc. County of Los Alamos, NM

With this combination the BDD has been able to operate safely and has consistently produced high quality drinking water for its customers. Under the Early Notification System (ENS) as described by the BDDDB-LANL MOU the BDD has had to cease diversions when it received notification that potentially contaminated surface water from the Pajarito Plateau canyons would reach the Rio Grande upstream of the BDD.

Monitoring of the Rio Grande by the Environment Department has resulted in the 2016-2018 Clean Water Act Section 303 Integrated Report (IR) Category of '5/5C' which indicates "available data and/or information indicate that at least one designated or existing use is not being supported but additional data are necessary to verify the listing before TMDLs are scheduled." Furthermore, the last Integrated List for Rio Grande Section 20.6.4.114, between Cochiti Reservoir and San Ildefonso boundary reveals "not supporting" attainment for 5 separate uses including irrigation (IRR), livestock watering (LW), marginal coldwater aquatic life (MCWAL), warmwater aquatic life (WWL) and wildlife habitat (WH). The Environment Department has several tools that should be used to address these violations.

We request that the New Mexico Environment Department enforce the State Water Quality Control Act, strengthen its monitoring and regulation of water quality of the Rio Grande section between Cochiti Reservoir and San Ildefonso. In addition, we request the Environment Department establish a Total Maximum Daily Load (TMDL) limit or equivalent on contaminants in its upcoming Triennial review. We will submit a formal petition to this effect and plan on supporting the request in the review process.

We request that the New Mexico Environment Department continue to engage with Los Alamos National Laboratory on the Order on Consent and return to the structure, scope and clean up implementation program as described in the 2005 Order on Consent.

Finally, we ask that the NMED support the re-establishment of a monitoring station at the E109.9 location in LA/Pueblo canyon.

The BDD Board welcomes the opportunity to discuss these matters further with both of you and appreciates your support and commitment to improving the surface water quality of the Rio Grande, the lifeblood of New Mexico.

Sincerely,

/s/ Anna Hamilton

Anna Hamilton, Santa Fe County Commissioner
Chair, Buckman Direct Diversion Board

On behalf of the Buckman Direct Diversion Board:

Michael Harris, Santa Fe City Councilor
Vice Chair, Buckman Direct Diversion Board

Attachment 3. BDD Letter (June 7, 2019)
Petition for Review by Inc. County of Los Alamos, NM

Anna Hansen, Santa Fe County Commissioner
Buckman Direct Diversion Board

Peter Ives, Santa Fe City Councilor
Buckman Direct Diversion Board

Denise Fort, Citizen At-Large BDDDB Member
Buckman Direct Diversion Board

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

_____)
In re:)
)
Incorporated County of Los Alamos,)
New Mexico)
)
Re: “DESIGNATION DECISION AND)
RECORD OF DECISION IN RESPONSE TO)
PETITION BY AMIGOS BRAVOS FOR A)
DETERMINATION THAT STORMWATER)
DISCHARGES IN LOS ALAMOS COUNTY)
CONTRIBUTE TO WATER QUALITY)
STANDARDS VIOLATIONS AND REQUIRE)
CLEAN WATER ACT PERMITS”)
(December 16, 2019))
_____)

CERTIFICATE OF SERVICE OF PETITION AND ATTACHMENTS (OVER 50 PAGES)

I certify, pursuant to the Environmental Appeals Board *Practice Manual*, that on the 17th day of January, 2020, a copy of the Incorporated County of Los Alamos, New Mexico’s Petition for Review and Attachments was mailed to the Environmental Appeals Board and the Respondent by U.S. First Class mail:

Clerk of the Board

U.S. Environmental Protection Agency
Environmental Appeals Board
1200 Pennsylvania Avenue, NW
Mail Code 1103M

Washington, D.C. 20460-0001

U.S. Environment Protection Agency

Ken McQueen, Regional Administrator

U.S. EPA Region VI

1445 Ross Avenue, Suite 1200

Dallas, Texas 75202



Kevin J. Powers, Assistant County Attorney
Incorporated County of Los Alamos, New Mexico
1000 Central Avenue, Suite 340
Los Alamos, New Mexico 87544
Telephone: (505)662-8020
Email: kevin.powers@lacnm.us,