



**concerned citizens
for nuclear safety**

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March 4, 2004

Ms. Felicia Orth, Hearing Officer
New Mexico Environment Department
1190 St. Francis Drive, P. O. Box 26110
Santa Fe, NM 87502-6110

Re: CCNS comments about the 2003 Triennial Review of the
New Mexico Surface Water Quality Standards

Dear Ms. Orth:

Concerned Citizens of Nuclear Safety (CCNS) appreciates the opportunity to submit the following comments at the 2003 Triennial Review of the New Mexico Surface Water Quality Standards hearing. CCNS is a Santa Fe-based non-profit organization that began in 1988 because of citizen concerns about the transportation of nuclear waste from Los Alamos National Laboratory (LANL), through the City of Santa Fe, to the Waste Isolation Pilot Plant.

University of California (UC)/Los Alamos National Laboratory (LANL)/Department of Energy (DOE)/National Nuclear Security Administration (NNSA): Los Alamos National Laboratory (LANL) sits on top of the Pajarito Plateau, in some of the headwaters of the Rio Grande. CCNS is very concerned about protecting the headwaters and about the contaminants from LANL operations being introduced into surface and ground waters.

As background, the budgets for the two national laboratories in New Mexico, LANL and Sandia National Laboratories, about match the state's annual budget, approximately \$4 billion. Over 10 million people downstream of LANL use the Rio Grande for drinking water, agriculture and recreation: Currently, Santa Fe and Albuquerque are considering diverting water from the Rio Grande for drinking water.

CCNS is concerned that the Regents of the University of California have filed their documents to present technical testimony at this hearing and that the parties have agreed that the Regents will be represented in the hearing as "Los Alamos National Laboratory," or "LANL." CCNS is concerned about the semantics in this situation. The U.S. Department of Energy (DOE) and the National Nuclear Security Administration (NNSA) own LANL. The Regents are the managers and operators of the facility, and have been since 1943. If the Regents filed the petition, then CCNS believes that the Regents should be referred to directly and not hide behind the LANL name. If the DOE/NNSA wishes to challenge New Mexico's water quality standards, then they should be at the table. We understand that DOE/NNSA is not directly involved in the hearing

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LANL
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process because they are required to consult with the other federal agencies participating in the Triennial Review, including the U.S. Fish and Wildlife Service.

Furthermore, CCNS questions why an agency from another state is challenging New Mexico's state water quality standards. The University of California system was established by Article 9 of the California Constitution, constitutes "a public trust" and is administered by the Regents of the University of California "with full powers of organization and government." California Constitution Article 9 (a). CCNS believes that, due to the nature of the creation of the University of California as a public trust, the Regents have a conflict of interest in challenging the water quality standards requested by the public and the State of New Mexico. CCNS requests and would appreciate the parties addressing the issue in their Findings of Fact and Conclusions of Law.

Another question is about the relationship the Hearing Officer has with LANL. Her husband works for LANL. Although the parties did not object to the Hearing Officer at the beginning of the hearing, CCNS strongly urges the New Mexico Environment Department (NMED) to move forward to enhance the pool of hearing officers for just such an occasion.

CCNS objects to the proposal by the Regents of the University of California to prohibit the NMED Secretary from approving additional sampling and analysis methods. NMAC 20.6.4.12. The Secretary should retain the ability to change, add or modify the sampling and analysis methods in order to protect public health and the environment.

CCNS also objects to the Regent's proposal to add a provision to the acute toxicity of effluent by allowing discharges that exceed the standards once every three years. This is unacceptable. The Regents should be working towards zero discharges into the head, surface and ground waters of the Rio Grande watershed. NMAC 20.6.4.12.

CCNS supports NMED's proposal to add high quality coldwater aquatic life to the perennial tributaries to the Rio Grande in Bandelier National Monument and their headwaters in Sandoval County and all perennial reaches of tributaries to the Rio Grande in Santa Fe County, unless included in other segments. NMAC 20.6.4.121a. Again, CCNS is concerned that the Regents are opposing such a change.

CCNS supports NMED's proposal to add new sections NMAC 20.6.4.121b for the Rio Grande Basin to include perennial portion of Los Alamos Canyon below Los Alamos Reservoir and perennial portions of Sandia, Pajarito and Valle Canyons and NMAC 20.6.4.121c for perennial portions of Los Alamos Canyon above Los Alamos Reservoir and Los Alamos Reservoir. CCNS believes that the lengthy evidence submitted by the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, for

the Triennial Review supports adding these new segments, their designated uses and the default criteria for all uses. Again, CCNS is concerned that the Regents are opposing such additions.

CCNS directs the Hearing Officer and members of the Water Quality Control Commission to the July 2002 report of the U.S. Fish and Wildlife Service, entitled *A Water Quality Assessment of Four Intermittent Streams in Los Alamos County, New Mexico*, for sound science supporting these changes. CCNS found the Conclusions and Recommendations, beginning on page 85, to be a very useful, quick summary of the report.

Perchlorate: CCNS urges the Commission to investigate adopting a perchlorate standard, or in the alternative, to list perchlorate on the narrative standard and listing of constituents of "toxic pollutants." NMAC 20.6.2.7.VV. For the past several years, CCNS has been sampling the possible leading edge of contamination from LANL to the Rio Grande. LANL and NMED are also finding fast moving contaminants at the river's edge, including perchlorate and the radionuclide tritium, which mimics hydrogen. The Environmental Protection Agency has proposed a provisional standard of 1 part per billion of perchlorate per liter of water (1 ppb/L). CCNS supports the Commission adopting a similar standard or alternatively, listing perchlorate on the narrative standard and listing of toxic pollutants. NMAC 20.6.2.7VV.

High Explosives: CCNS urges the Commission to list high explosives on the narrative standard and listing of constituents of "toxic pollutants." NMAC 20.6.2.7.VV. Specifically, CCNS recommends listing dinitrotoluene (DNT) isomers (2,6-DNT), octahydro-1,3,5,7-tetranitro-1,3,5,7-tetrazocine (HMX), hexahydro-1,3,5-trinitro-1,3,5-triazine (RDX) and 2,4,6-trinitrotoluene (TNT).

Aquatic Life: CCNS questions the need for a new "limited aquatic life" use and the way such a use has been used to deny chronic aquatic life standards to certain waters. As the testimony from U.S. Fish and Wildlife Service demonstrates, chronic life standards should apply to these waters, including New Mexico's ephemeral and intermittent waters. By adopting a new aquatic life use that is less protective than other aquatic life uses, CCNS is concerned that the Commission will be setting a precedent and will, in fact, be encouraging a less protective use on a wide range of water bodies. In short, CCNS does not see the need for the new "limited aquatic life" use and opposes such a change to the standards. CCNS supports NMED's most recent proposal to apply "acute aquatic life" and "chronic aquatic life standards" to these waters. This could be accomplished simply by applying the general "aquatic life" use to these waters.

Proposals Submitted by Amigos Bravos: CCNS supports the proposed changes submitted by Amigos Bravos, including

1. Nominating the Rio Santa Barbara as an Outstanding National Resource Water, a class of waters that receives the highest amount of protection under the Clean Water Act.
2. Changing the definition of "waters of the state" to be more inclusive of all waters of the state. CCNS supports "delinking" New Mexico's definition from the federal definition. CCNS is very concerned that the constriction of the federal definition will impact waters in New Mexico.
3. Amending New Mexico's mixing zone policy to protect our rivers from toxic discharge.

Thank you for your consideration of our testimony and recommendations.

Sincerely,



Joni Arends
Executive Director

cc: Senator Pete V. Domenici
Senator Jeff Bingaman
Representative Tom Udall
Robert C. Dynes, President of the University of California
S. Robert Foley, Vice President for Laboratory Management
The Regents of the University of California
Secretary of the Regents Trivette