

**TECHNICAL SUPPORT DOCUMENT  
FOR EPA REGION 6 REVIEW OF:**

**Revisions to Pueblo of Sandia Water Quality Standards**

**U.S. EPA REGION 6  
WATER DIVISION  
August 2024**

## I. Introduction

### ***Background***

As described in section 303(c) of the Clean Water Act (CWA) and in the water quality standards (WQS) regulation at 40 CFR part 131, states and authorized Tribes have primary responsibility to develop and adopt WQS to protect their waters. State and Tribal WQS consist of three primary components: designated uses, criteria to support those uses, and antidegradation requirements. Pursuant to 40 CFR 131.11, states should establish numeric water quality criteria based on CWA section 304(a) Guidance (131.11(b)(1)(i)); 304(a) Guidance modified to reflect site-specific conditions (131.11(b)(1)(ii)); or other scientifically defensible methods (131.11(b)(1)(iii)). In addition, CWA section 303(c)(1) and 40 CFR 131.20 require states and authorized Tribes to hold public hearings at least once every three years to review and, as appropriate, modify and adopt standards. As specified in 40 CFR 131.21, the Environmental Protection Agency (EPA) reviews new and revised WQS that have been adopted by states and authorized Tribes. Authority to approve or disapprove new and revised WQS submitted to the EPA Region 6 for review has been delegated to the Water Division Director in Region 6. State and Tribal WQS are not considered effective under the CWA unless and until approved by the EPA.

The EPA only reviews provisions of state and Tribal submittals that are new or revised WQS. The EPA determines whether a provision is a new or revised WQS after considering the following:

1. Is the provision legally binding, adopted or established pursuant to state or Tribal law?
2. Does the provision address designated uses, water quality criteria (narrative or numeric) to protect designated uses, and/or antidegradation requirements for waters of the United States?
3. Does the provision express or establish the desired condition (e.g., uses, criteria) or instream level of protection (e.g., antidegradation requirements) for waters of the United States immediately or mandate how it will be expressed or established for such waters in the future?
4. Does the provision establish a new WQS or revise an existing WQS?

The EPA has concluded that the freshwater chronic cadmium criterion in the *Pueblo of Sandia Surface Water Quality Standards* adopted by the Pueblo of Sandia in August 2023 is a revised WQS subject to the EPA's review under CWA section 303(c)(3). The purpose of this Technical Support Document (TSD) is to document the EPA's review of and provide the basis for the EPA's action on the Pueblo of Sandia's revised freshwater chronic cadmium criterion.

## II. Revised Provisions the EPA is Approving

### ***Appendix B***

#### ***Freshwater Aquatic Criteria***

Appendix B Toxic Substances Table. The Pueblo of Sandia initially based its revised freshwater chronic cadmium criterion to protect aquatic life on the EPA's 2016 CWA section 304(a) recommended cadmium criterion, in accordance with 40 CFR 131.11(b)(1)(i). After the Pueblo of Sandia's adoption of this revised freshwater chronic cadmium criterion but prior to submittal to the EPA, the U.S. District Court for the District of Arizona vacated the EPA's 2016 national recommended chronic freshwater cadmium aquatic life criterion.<sup>1</sup> As a result, the Pueblo of Sandia re-evaluated the scientific basis for its revised freshwater chronic cadmium criterion. The Pueblo of Sandia evaluated other scientifically defensible methods, in accordance with 40 CFR 131.11(b)(1)(iii) and scientific studies conducted after the 2016 CWA section 304(a) recommended cadmium criteria were published and concluded that its freshwater chronic cadmium numeric criterion is based on a sound scientific rationale and protective of the designated uses. The EPA agrees and pursuant to CWA section 303(c)(3) and the implementing WQS regulation at 40 CFR 131.11 approves the Tribe's revised freshwater chronic cadmium criterion as based on a sound scientific rationale and protective of the applicable aquatic life use.

## III. Endangered Species Act Consultation

Section 7(a)(2) of the Endangered Species Act (ESA) requires that federal agencies consult with the U.S. Fish and Wildlife Service (USFWS), as appropriate, to ensure that their actions are not likely to jeopardize the continued existence of listed species or result in the adverse modification or destruction of critical habitat. The EPA previously determined that the only new or revised WQS subject to consultation in the Pueblo of Sandia's triennial revision included the state's new or revised aquatic life criteria for ammonia, acrolein, cadmium, carbaryl, and tributyltin in all freshwaters of the Pueblo. A species list provided through the USFWS's Environmental Conservation Online System/Information for Planning and Consultation (ECOS/IPaC) site for the above affected waters identified eight federally threatened, endangered, or candidate species. Of those listed species, the Rio Grande silvery minnow and the Rio Grande cutthroat trout are aquatic, or aquatic dependent, and have the potential to be affected by the EPA's actions on those criteria. There is no designated critical habitat within Tribal lands for the two species. The Pueblo of Sandia has developed and adopted the Pueblo of Sandia Bosque Management Plan. Within this plan are specific objectives to provide for special management considerations or protections of the silvery minnow. The USFWS previously reviewed the plan, finding it complete and able to provide significant conservation benefit to the silvery minnow.

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<sup>1</sup> *Center for Biological Diversity v. EPA et al.*, No cv-22-00138-TUC-JCH (D. Ariz, Aug. 18, 2023); appeal pending in *Center for Biological Diversity v. U.S. EPA et al.*, 9th Cir. No. 23-2946.

The EPA coordinated with and sought the advice of the USFWS New Mexico Ecological Services Field Office in Albuquerque, New Mexico, on the EPA's actions and their potential effects on listed species. In a letter dated November 15, 2023, the USFWS concurred with the EPA's determination that the Pueblo of Sandia's adoption of aquatic life criteria for ammonia, acrolein, cadmium, carbaryl, and tributyltin is not likely to adversely affect the Rio Grande silvery minnow or its critical habitat in the Pueblo of Sandia's surface waters. The EPA Region 6 approved the ammonia, acrolein, acute cadmium, carbaryl, tributyltin criteria in its initial action dated December 12, 2023. The Pueblo of Sandia reaffirmed but did not modify the revised freshwater chronic cadmium criterion after November 15, 2023, and therefore the USFWS' concurrence remains applicable to this action. The EPA determined that approval of the aquatic life criteria for ammonia, acrolein, cadmium, carbaryl, and tributyltin will have no effect on the Rio Grande cutthroat trout.