State of New Mexico

Water Quality Control Commission

FINAL 08/11/08

2008-2010 State of New Mexico CWA §303(d)/§305(b) Integrated Report

- Appendix C -

Response to Comments

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RESPONSE TO COMMENTS

2008-2010 STATE OF NEW MEXICO
INTEGRATED §303(d)/ §305(b)
LIST OF ASSESSED SURFACE WATERS

Table of Contents

COMMON ACRONYMS.....2
CHANGES TO THE DRAFT 2008-2010 LIST BASED ON SWQB STAFF REVIEW: 3
COMMENT SET 1 – Eagle Creek Conservation Association, Inc., Ruidoso, NM.....5
COMMENT SET 2 – Dairy Producers of New Mexico via Glorieta Geoscience, Inc., Santa Fe, NM 10
COMMENT SET 3 – Pueblo of San Ildefonso, Santa Fe, NM 13
COMMENT SET 4 – Amigos Bravos, Taos, NM.....15
COMMENT SET 5 – USFS Carson National Forest, Taos, NM 23
COMMENT SET 6 – City of Farmington, NM.....25
COMMENT SET 7 – Taos County Commission, Taos, NM.....27
COMMENT SET 8 – New Mexico Farm & Livestock Bureau, Las Cruces, NM.....30
COMMENT SET 9 – US Fish and Wildlife Service, Albuquerque, NM 32
COMMENT SET 10 – Pueblo of Santa Ana, NM.....36
COMMENT SET 11 – San Juan Water Commission, Farmington, NM 37
COMMENT SET 12 – Bureau of Land Management, Taos, NM 41
COMMENT SET 13 – New Mexico Cattle Growers' Association, Albuquerque, NM.....43
COMMENT SET 14 – New Mexico Wool Growers' Incorporated, Albuquerque, NM 47
COMMENT SET 15 – Rebecca Perry-Piper, Ponderosa, NM 50

PLEASE NOTE:

Original typed letters that were not received electronically were scanned and converted to MSWord. Letters received electronically were also converted to MSWord. All text was converted to Arial 11 font with standard page margins for ease of collation. Hand written letters were scanned and inserted. Contact information such as phone number, street addressed, and emails from private citizens were removed for privacy reasons. All originals letter of comment are on file at the SWQB office in Santa Fe, NM.

COMMON ACRONYMS

20.6.4 NMAC	State of New Mexico Standards for Interstate and Intrastate Surface Waters (as amended through August 1, 2007)
AU	Assessment Unit
EPA	US Environmental Protection Agency
IR	Integrated Report
NMAC	New Mexico Administrative Code
NMED	New Mexico Environment Department
NPDES	National Pollutant Discharge Elimination System
ROD	Record of Decision (for the 303(d) list)
SWQB	Surface Water Quality Bureau
TMDL	Total Maximum Daily Load
USEPA	United State Environmental Protection Agency
WQ	Water Quality
WQCC	Water Quality Control Commission
WQS	Water Quality Standards
WRAS	Watershed Restoration Action Strategy
WWTP	Wastewater Treatment Plant

CHANGES TO THE DRAFT 2008-2010 LIST BASED ON SWQB STAFF REVIEW:

1. In the Tularosa Valley Watershed (HUC 13050003), a new assessment unit (AU) named "Three Rivers (USFS bnd to headwaters)" was added with an impairment of E. coli because the 2004 sampling station used to assess the previously-noted AU, "Three Rivers (Perennial prt HWY 54 to USFS exc Mescalero)," is located upstream of this AU upstream of the USFS boundary and reflects water quality conditions in the newly established upper AU. A TMDL is under development for the upper AU. The lower AU, still named "Three Rivers (Perennial prt HWY 54 to USFS exc Mescalero)," is now noted as Category 4C due to low flow alteration from diversion. Both the Record of Decisition (ROD) and list were corrected accordingly.
2. In the Upper Rio Grande Watershed (HUC 13020101), the Rio Chiquito was de-listed for turbidity on the public draft 2008-2010 Integrated List based on application of 2004 sonde data to numberic turbidity criteria that existed in 2004. All numeric segment-specific turbidity criteria were removed during the 2005 triennial review, and replaced with General Criteria 20.6.4.13.J. New assessment methods to determine turbidity impairment based on this new narrative language are not yet available. To be consistant with how all other turbidity listings were handled during the 2008-2010 listing cycble, SWQB will retain this historic turbidity listing on the final 2008-2010 Integrated List. Both the ROD and list were corrected accordingly.
3. In the Rio Grande-Albuquerque Watershed (HUC13020203), following the release of the draft 2008-2010 Integrated List for public comment, a database error was realized and corrected. This error involved total cyanide data being entered into the database, and eventually assessed as, weak acid dissociable data. The weak acid dissociable form of cyanide is a component of total cyanide, but the two are not interchangeable. There also is no means to convert total cyanide data into weak acid dissociable cyanide data and it is the weak acid dissociable form that the NM water quality criteria address for the designated uses on the middle Rio Grande. Therefore, assessments for the four assessment units on the Rio Grande from San Marcial to Angostura were reevaluated and the weak acid dissociable cyanide listings were removed due to insufficient data to determine impairment from weak acid dissociable cyanide. Also, re-evaluation of all available sonde data for the middle Rio Grande reaches resulted in the addition of dissolved oxygen impairment listings for two AUs: "Rio Grande (non-pueblo Alameda Bridge to Angostura Div)" and "Rio Grande (Isleta Pueblo bnd to Alameda Bridge)." Both the ROD and list were corrected accordingly.
4. The User Defined Categories of 5A, 5B, and 5C must be manually added and removed through the Assessment Database (ADB) while the main Integrated Report (IR) Category is determined by the database based on impairments, de-listings, and TMDL completion. There were a few User Defined Categories that were inadvertently not removed during development of the draft list. Therefore, the below corrections were made:

WATERSHED NAME	AU ID	AU NAME	DRAFT IR_category	CORRECTED IR_category
Canadian Headwaters	NM-2306.A_151	Caliente Canyon (Vermejo River to headwaters)	4A/5B	4A
Canadian Headwaters	NM-2305.A_250	Chicorica Creek (Canadian River to East Fork Chicorica)	1/5A	1
Canadian Headwaters	NM-2305.A_220	Vermejo River (Rail Canyon to York Canyon)	4A/5A	4A
El Paso-Las Cruces	NM-2101_01	Rio Grande (Anthony Bridge to Picacho Bridge)	4A/5A	4A
El Paso-Las Cruces	NM-2101_00	Rio Grande (International Mexico bnd to Anthony Bridge)	4A/5A	4A
El Paso-Las Cruces	NM-2101_10	Rio Grande (Leasburg Dam to one mile below Percha Dam)	4A/5A	4A
El Paso-Las Cruces	NM-2101_02	Rio Grande (Picacho Bridge to Leasburg Dam)	4A/5A	4A
Jemez	NM-2106.A_53	Calaveras Creek (Rio Cebolla to headwaters)	2/5A	2
Mimbres	NM-2804_40	Mimbres R (Perennial reaches Cooney Cyn to headwaters)	2/5B	2
Mora	NM-2306.A_020	Coyote Creek (Mora River to Black Lake)	4A/5B	4A
Mora	NM-2306.A_024	Little Coyote Creek (Black Lake to headwaters)	4A/5B	4A
Mora	NM-2306.A_000	Mora River (HWY 434 to Luna Creek)	4A/5B	4A
Mora	NM-2305.3.A_00	Mora River (USGS gage east of Shoemaker to HWY 434)	4A/5A	4A
Mora	NM-2305.3.A_20	Sapello River (Mora River to Manuelitas Creek)	4A/5A	4A
Pecos Headwaters	NM-2212_04	Beaver Creek (Porvenir Creek to headwaters)	2/5A	2
Rio Puerco	NM-2107.A_40	Rio Puerco (Arroyo Chijuilla to northern bnd Cuba)	4A/5A	4A
Rio Grande –Santa Fe	NM-2110_00	Santa Fe River (Cochiti Pueblo bnd to the Santa Fe WWTP)	5/4A	5/5A
Rio San Jose	NM-2107.A_00	Bluewater Creek (non-tribal Rio San Jose to Bluewater Rsvr)	4A/5A	4A
Upper Pecos-Black	NM-2202.A_10	Black River (Perennial reaches of Pecos River to headwaters)	2/5A	2
Upper Rio Grande	NM-2120.A_827	Comanche Creek (Costilla Creek to headwaters)	4A/5A	4A
Upper Rio Grande	NM-9000.B_077	Los Alamos Reservoir	3/5C	3
Upper Rio Grande	NM-2120.A_421	Rio Chiquito (Picuris Pueblo bnd to headwaters)	2/5B	2
Upper Rio Grande	NM-2118.A_52	Rio Quemado (Santa Cruz River to Rio Arriba Cnty bnd)	2/5C	2
Upper Rio Grande	NM-2118.A_31	Tesuque Creek (Rio Tesuque to confl of forks)	2/5A	2

COMMENT SET 1 – Eagle Creek Conservation Association, Inc., Ruidoso, NM

Lynette Guevara
NMEDSWQB
RoomN2163
PO Box 26110
Santa Fe, NM 87502
505-827-2904

June 18, 2008

Dear Ms. Guevara:

The Eagle Creek Conservation Association, Inc. has intimate and extensive knowledge of the conditions on upper Eagle Creek. We are currently involved in a settlement that will hopefully cause the US Forest Service to obey the law and protect the North Fork of Eagle Creek.
This stretch of river has been designated a perennial trout stream for many years. Failure of the Forest Service to protect the stream has resulted in a settlement that requires a million dollar hydrology and Environmental Impact Statement. The point of this exercise is to decide under what conditions can the Forest Service renew a Special Use Permit that allows the Village of Ruidoso to pump municipal water from their ground water wells located in the streambed of the headwaters of Eagle Creek. The impairment to the creek as a direct result of pumping is obvious, yet the Forest Service will, through their inaction and this settlement, allow the Village to continuing to pump Eagle Creek dry for a 10 year period before having to make a responsible decision.

We would appreciate the NMED SWQB performing the necessary background investigation to verify and document our statements. Anything you can do to make this situation visible and to apply pressure to the US Forest Service for appropriate corrective action would be immensely appreciated.

SWQB RESPONSE: *SWQB appreciates your association's efforts to ensure surface flow to this creek. Designated uses on many New Mexico streams are impacted due at least in part to hydrological modifications such as dams, channelization, diversions or pumping. The Clean Water Act (CWA) and the New Mexico Water Quality Act contain limitations regarding the impact of water quality decisions on water rights, found at CWA 33 U.S.C. §1251 (g) and NMSA 1978 §74-6-12.A. In New Mexico, the authority to regulate water use resides with the Office of the State Engineer; NMED's jurisdiction is limited to water quality concerns. SWQB does encourage cooperative efforts to restore instream flows, but resources for such efforts are limited.*

Sincerely,

William S. Midkiff, Ph.D., P.E.
Technical Advisor
Don·Stockstill
President

Comments attached

Copies: John Horning, Wildearth Guardians
Letty Belin
Kelly Cassels

Peter Balleau
The Honorable Steve Pearce, Attn: Ms. Cindy Willard
Jacqueline Buchanan, Lincoln National Forest Supervisor

Comments on the draft 2008-2010 State of New Mexico Integrated Clean Water Act (CWA) Sections 303(d)/305(b) List of Assessed Surface Waters (Integrated List).

Eagle Creek (Alto Reservoir to Mescalero Apache bnd) Rio Hondo

This stretch should presently be broken into 4 segments:

1. Alto Reservoir to the confluence of the South Fork and the North Fork

2. South Fork from the confluence of the South Fork and the North Fork to Mescalero Apache bnd

3. North Fork downstream from the Village of Ruidoso North Fork wells

4. North Fork upstream from the North Fork wells

ECCA Comments

Item 4. North Fork upstream from the North Fork wells - This stretch presently has the following uses:

Domestic Water Supply - We believe the USGS has drilled a well that provides domestic water to the "summer cabins." This USGS can confirm the interconnection between the well and the surface water. Its use probably does not diminish the flow in the surface water to the point of damaging the stream.

Fish culture- Fully supported. This stretch has historically maintained a permanent population of native trout and does today.

High Quality Coldwater Aquatic Life - Fully Supported. This stretch has historically maintained a permanent population of native trout and does today. At one time a fish hatchery was operated on the North Fork.

Industrial Water Supply: Not Supporting, not appropriate

Irrigation: Not Supporting, not appropriate

Livestock Watering: Limited support for occasional use

Municipal Water Supply: Not Supporting, demonstrated to be a destructive use

Secondary Contact: Not Assessed

Item 3. North Fork downstream from the Village of Ruidoso North Fork wells to its confluence with the South Fork.

This stretch has been kept bone dry over 90% of the time during the last 8 1/2 years as a result of excess pumping of municipal wells (North Fork wells) owned and operated by the Village of Ruidoso. This pumping has been conducted with the consent of the US Forest Service in spite of the fact that the SUP (Special Use Permit) required by the USFS expired in 1996. The USGS can confirm the interconnection of the well water and the surface water. Only during massive runoffs from abnormally high precipitation does the creek flow. The naturally occurring artesian conditions are altered by pumping. Most of the time, the depth to water is in excess of 400 feet, a condition that causes water that would have flowed on the surface to be directed underground. Studies presented by Balleau Groundwater to the State Engineer show that this pumping has detrimentally affected the North Fork, the South Fork, and the stretch from their confluence to Alto Lake. Indeed, that was a period of approximately 5 years when a combination of slightly less than average precipitation and pumping resulted in Alto Reservoir remaining constantly dry. As this stretch is presently being administered by the USFS, the Use Information is as follows:

Domestic Water Supply: No domestic wells in this stretch

Fish Culture: No Fish, creek is dry. Historical presence destroyed

High Quality Coldwater Aquatic Life: Historical presence destroyed

Industrial Water Supply: Not supported, inappropriate location for diversion

Livestock Watering: Not supported. Creek is dry.

Municipal Water Supply: Inappropriate location for diversion

Secondary Contact: Dry, No water

Wildlife Habitat: Not Supported. Creek is dry

Item 2. South Fork from the confluence of the South Fork and the North Fork to Mescalero Apache bnd

The report by Balleau Groundwater, presented to the State Engineer, showed a detrimental effect on the South Fork as well as the North Fork. However, the South Fork has continued to flow during the period the North Fork wells have been allowed to operate with an expired SUP, with the consent ofthe US Forest Service.

At this time, this would be our understanding of the Use Information

Domestic Water Supply: There is probably well water (interconnected with surface water) supporting the Mescalero Campground

Fish Culture: Fully Supporting

High Quality Coldwater Aquatic Life: Fully Supporting

Industrial Water Supply: Not supporting. Inappropriate location

Irrigation: Fully Supporting

Livestock Watering: Fully Supporting

Municipal Water Supply: Not Supporting. Inappropriate location.

Secondary Contact: Not assessed.

Wildlife Habitat: Fully Supporting

Item 1. Alto Reservoir to the confluence of the South Fork and the North Fork
Surface flow has been seriously diminished. Virtually all of the flow that would have come from the North Fork has been diverted by the North Fork wells. What surface water that is realized in this stretch is almost completely derived from the South Fork.

Corrective action needed: A minimum in-stream flow agreement for the South Fork, the North Fork and the entrance to Alto lake (approximately 1 cfs at this point), below which no diversion by the Village for Municipal water supply is permitted, would satisfactorily restore all four stretches of the Creek to historical, perennial conditions. The Village has water rights to more surface water than has been historically diverted as ground water from the North Fork wells. By diverting surface water that is in excess of 1 cfs flows, the Village has access to more municipal water, without damaging the creek, than it has been able to divert with its present destructive operating procedure.

Use Information

Domestic Water Supply: Operation of the North Fork Wells has negative impacts on downstream domestic water wells. Worse is the detrimental impact on domestic wells in the residential area downstream from Alto Reservoir. More than half have required re-drilling to greater depths. Naturally occurring recharge has been impaired as a result of excess diversion from the North Fork wells and a severely diminished surface flow.

Fish Culture: Inadequate surface flow resulting from pumping North Fork wells

High Quality Coldwater Aquatic Life: Inadequate surface flow resulting from pumping North Fork wells

Industrial Water Supply: Inappropriate use

Irrigation: Inadequate surface flow resulting from pumping North Fork wells

Livestock Watering: Intermittent supply resulting from pumping North Fork wells

Municipal Water Supply: Fully Supporting. Surface diversion while maintaining a minimum instream flow of 1 cfs would be an environmentally sound procedure. The Village has water rights to more surface water than has been historically diverted as ground water from the North Fork wells.

Secondary Contact: Not Assessed

Wildlife Habitat: Surface flow severely diminished and intermittent as a result of pumping the North Fork wells.

Solution: We encourage the NMED to use its enforcement powers to cause the US Forest Service to restore the perennial condition of Eagle Creek and to only permit municipal diversions in a manner that is consistent with protection of the creek for the following designated uses:

Domestic Water Supply

Fish Culture

High Quality Coldwater Aquatic Life

Irrigation

Livestock Watering

Wildlife Habitat

and, Municipal Water Supply under a properly restrictive Special Use Permit

SWQB RESPONSE: *Eagle Creek currently falls under 20.6.4.209 NMAC and cannot be changed without amendment to the water quality standards following a public hearing. The currently designated uses in this WQS segment include the following: domestic water supply, fish culture, high quality coldwater aquatic life, irrigation, livestock watering, wildlife habitat, municipal and industrial water supply and secondary contact. The appropriate mechanism to propose breaking Eagle Creek and its tributaries with the above suggested designated uses is through the water quality standards triennial review process. SWQB plans to make a public comment draft of potential revisions to the water quality standards available to the public in mid-August 2008 in order for stakeholders to provide comment.*

In addition, SWQB bases the determination of Fully Supported vs. Not Supporting on available chemical, biological, and physical data as assessed against current applicable water quality criteria utilizing the most recent SWQB assessment protocols available at http://www.nmenv.state.nm.us/swqb/protocols/index.html. Your comments above regarding use attainment are useful for survey planning and understanding of the watershed, but they cannot be the basis of changes to current designated use attainment status on the Integrated List.

COMMENT SET 2 – Dairy Producers of New Mexico via Glorieta Geoscience, Inc., Santa Fe, NM

Ms. Lynette Guevara
NMED Surface Water Quality Bureau
Room N2163
P.O. Box 26110
Santa Fe, New Mexico, 87502
(505) 827-2904

RE: DAIRY PRODUCERS OF NEW MEXICO COMMENTS ON NEW MEXICO ENVIRONMENT DEPARTMENT SURFACE WATER QUALITY BUREAU DRAFT 2008-2010 STATE OF NEW MEXICO INTEGRATED CLEAN WATER ACT SECTIONS 303(D)/ 305(B) LIST OF ASSESSED SURFACE WATERS

Submitted via e-mail to: Lynette.Guevara@state.nm.us

Dear Ms. Guevara:

Dairy Producers of New Mexico (DPNM) represents our member dairies in New Mexico West Texas, and Kansas. DPNM is presenting comments on the New Mexico Environment Department's (NMED) Surface Water quality Bureau's proposed **2008 – 2010 STATE OF NEW MEXICO INTEGRATED CLEAN WATER ACT §303(d)/§305(b) INTEGRATED LIST.** DPNM's recognizes that New Mexico, under the Federal Clean Water Act (CWA) §303(d)(1), is required to develop a list of waters within the state that are not supporting their designated uses. A Total Maximum Daily Load (TMDL) will be proposed for each pollutant for those "impaired waters." A TMDL planning document is a written plan and analysis established to restore a waterbody and to ensure that WQS are maintained for that waterbody. Based on data evaluated by NMED, the majority of water quality impairments identified in New Mexico's streams and rivers are due to nonpoint sources of water pollution.
DPNM proposes that in addition to assessing water quality in perennial streams, NMED, in association with the regulated community should develop field assessment or listing methodologies for ephemeral and intermittent streams. Field assessment or listing protocols should also be developed for watersheds that have naturally occurring constituents that cause water quality standards to be exceeded. Prior to listing any streams or watersheds, water quality must be assessed in headwaters to establish background water quality conditions. These data can then be used to develop predictive models for surface water quality assessment. Predictive models should also be developed to accommodate changes in water quality inputs due to fires in headwaters areas.

SWQB RESPONSE: *SWQB strives to do the best possible job monitoring and assessing surface waters of the state to determine use attainment status given available resources and available EPA guidance. SWQB documents assessment procedures in our assessment protocols available at: http://www.nmenv.state.nm.us/swqb/protocols/index.html. The Bureau solicits public comment on these protocols whenever there are significant revisions or every other listing cycle at a minimum. Predictive models are more appropriate in the TMDL and permitting arenas than for the determining use attainment status.*

DPNM reviewed the *2006-2008 State of New Mexico Integrated Clean Water Act §303(d)/§305(b) List and Report* (Please note that CAFO is an acronym for Concentrated Animal Feeding Operations - not Confined as written in the report). We have specific questions related to the availability and quality of data that resulted in NMED listing Permitted Runoff from CAFOs as a

source of 96.05 miles of Stream/River Water Quality Impairments listed in the Source Summary of New Mexico's Rivers and Streams.

SWQB RESPONSE: *Thank you for pointing out this oversight with the CAFO acronym. It has been corrected in the Integrated Report and List.*

DPNM have been working closely with Region 6 EPA and the Regional and Albuquerque District offices of the U.S. Fish and Wildlife Service (USFWS) for more than 3 years to develop Best Management Practices (BMPs) that are protective of surface water quality for permitted CAFOs in New Mexico. USFWS researched NMED and EPA databases and neither USFWS nor EPA could provide data showing that permitted (or unpermitted) discharges from New Mexico CAFOs have impaired surface water quality, especially where threatened or endangered species or their habitat exist. Due to scheduling conflicts we are unable to request a data review with NMED prior to the July 9, 2008 comment deadline. As such, DPNM requests that NMED provide us with all data used to support NMED's conclusion in the Source Summary listing that permitted discharges from CAFOs have impaired 96.05 miles of rivers or stream water quality.

SWQB RESPONSE: *CAFOs have been listed as one of several other Probable Sources of impairment for these 96.05 miles of rivers in the Lower Rio Grande region near the part of the state with the majority of CAFO operations. The Probable Sources list is intended to include any and all activities that could be contributing to the identified impairment. It is not intended to single out any particular land owner or single land management activity, and has therefore been labeled "Probable" and generally includes several possible items. Probable sources listed for any particular water body have not been proven to be the only source(s) of the identified impairment. It is generally based on qualitative field observations combined with knowledge of known land management activities that have the potential to contribute to the identified impairment. One of the primary reasons SWQB solicits public comment on the integrated 303(d)/305(b) list is so entities and individuals living and working in particular watersheds can provide specific information regarding Probable Sources of impairment that may have not been identified by SWQB staff.*

USEPA through guidance documents requires states to include a list of Probable Sources for each listed impairment. According to the 1998 305(b) report guidance, "…, states must always provide aggregate source category totals…" in the biennial submittal that fulfills CWA section 305(b)(1)(C) through (E) (USEPA 1997). "Sources" are defined as activities that may contribute pollutants or stressors to a water body (USEPA 1997). The 2006 Integrated Report guidance states that all states must submit to USEPA a description of the nature and extent of nonpoint source pollution, as well as state-level summaries of causes and sources of impaired waters (USEPA 2005). The term "probable" to describe sources is specifically noted in Appendix A of the 2006 Intregrated Report Guidance (USEPA 2005).

SWQB has requested that USEPA Region 6 provide clarity on the exact CWA 303d and 305b requirements related to Probable Source reporting. USEPA is also in the process of developing guidance for development of the 2010-2012 Integrated CWA 303d/305b List and Report – Probable Sources is on its agenda because the need for clarity, additional methods, and additional resources to identify Probable Sources is not unique to New Mexico. States and USEPA have made vast improvements in monitoring and assessment methods used to accurately identify causes of impairment over the last decade, while source identification continues to generally be based on a qualitative field observations combined with knowledge of known land management activities that have the potential to contribute to the identified impairment in most cases.

References:

USEPA. 1997. Guidelines for preparation of the comprehensive state water quality assessments (305(b) reports) and electronic uptakes. EPA-841-B-97-002A. Washington,

D.C.

USEPA. 2005. Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act. Office of Water, Washington, D.C.

Please contact either me via email at lazarus@glorietageo.com or at 983-5446 x111 or Sharon Lombardi, Executive Director, DPNM (1-800-217-2687) with any questions or comments.

Sincerely,

Jay Lazarus
Pres./Sr. Geohydrologist

xc: Sharon Lombardi, Executive Director, DPNM

COMMENT SET 3 – Pueblo of San Ildefonso, Santa Fe, NM

Pueblo de San Ildefonso
Department of Environmental and Cultural Preservation

SI-DECP08-412

July 2, 2008

Ms. Lynette Guevara, Program Manager
SWQB Monitoring and Assessment Section
P.O. BOX 26110
Santa Fe, NM 87502-6110

Re: Review of Draft 2008-2010 303(d)/305(b) List

Dear Ms. Guevara:

The Pueblo de San Ildefonso Department of Environmental and Cultural Preservation has reviewed the draft 2008 - 2010 303(d)/305(b) list and available data for these stream segments and has comments for your consideration. As per your request, we will provide files including the data cited. These will be sent via electronic mail by DECP staff. Radium 226/228 are combined for assessment purposes, however these analytes are commonly analyzed separately, therefore we have included a separate file of additional data for these analytes for Los Alamos Canyon. Additionally, because we are not familiar with all location names in the associated data files, some locations may exist outside of the specific stream segment with which they are affiliated.

1. Bayo Canyon - Under 20.6.4.97 (Ephemeral Waters not classified under 20.6.4.101 20.6.4.899 NMAC) designated uses include livestock watering, wildlife habitat, limited aquatic life and secondary contact. Data collected in 2004 by the LANL Water Quality and Hydrology Group document four instances of lead exceeding the 100ug/L livestock watering criterion. Lead exceedances were as follows (ug/L): 101, 262, 217 and 304. Data collected in 2004 by the LANL Water Quality and Department of Environmental and Cultural Preservation Hydrology Group document three instances of vanadium exceeding the 100 ug/L livestock watering criterion. Vanadium exceedances were as follows (ug/L): 132, 130 and 190. We suggest that this canyon be listed and assessed.

SWQB RESPONSE: *As noted in the Explanatory Notes of the draft 2008-2010 Integrated List and on the front page of the associated Record of Decision, all Pajarito Plateau listings will be re-assessed to incorporate additional data received since the last listing cycle, and presented in a separate addendum to this list in early 2009. During 2006 and 2007, the SWQB implemented a special study of the Pajarito Plateau. The waterbodies in this region will be re-assessed to incorporate these data as well as additional data received since the last listing cycle and presented in a separate addendum to the main Integrated List in early 2009 because all data from SWQB's study were not received in time to collate and re-assess for inclusion in the release of the main draft Integrated List on June 9, 2008.*

The data sets you submitted will be evaluated during assessment of all available data with applicable criteria. The data sets submitted did not indicate whether the values were for the total or dissolved fraction. This additional piece of information is necessary because the majority of New Mexico's water quality criteria are for the dissolved fraction while others require the total fraction.

SWQB has access to both LANL's data and NMED DOE Oversight's data and therefore will verify the fraction during the assessments.

2. Los Alamos Canyon - Under 20.6.4.128 (Rio Grande Basin - Ephemeral and intermittent portions of watercourses within lands managed by U.S. Department of Energy (DOE) within LANL) designated uses include livestock watering, wildlife habitat, limited aquatic life and secondary contact. Data collected by LANL Water Quality and Hydrology and NMED Oversight Bureau indicate several exceedances of Cadmium, Copper, Lead, Radium 226, Radium 228 and Vanadium above Livestock Watering designated use criteria. We suggest that these analytes be included as probable causes of impairment.

SWQB RESPONSE: *See above comment regarding Pajarito Plateau assessments.*

3. Pueblo Canyon has established wetlands below the wastewater treatment plant due to frequent effluent discharge. We believe that the 1.9 mi between the NPDES outfall and SR 502 should be considered a separately assessed segment of Pueblo Canyon.

SWQB RESPONSE: *Thank you for pointing out this oversight. A current assessment unit will be split and re-assessed during the upcoming Pajarito Plateau addendum to acknowledge this effluent-dominated perennial portion of Pueblo Canyon below the new Los Alamos WWTP outfall. The 2008 ROD entry implying this entire AU is likely ephemeral has been changed.*

4. Pueblo Canyon - Under 20.6.4.128 (Rio Grande Basin - Ephemeral and intermittent portions of watercourses within lands managed by U.S. Department of Energy (DOE) within LANL) designated uses include livestock watering, wildlife habitat, limited aquatic life and secondary contact. Data collected by LANL Water Quality and Hydrology and NMED Oversight Bureau indicate several exceedances of Arsenic, Cadmium, Cobalt, Lead, and Vanadium above Livestock Watering designated use criteria. We suggest that these analytes be included as probable causes of impairment.

SWQB RESPONSE: *See above comment regarding Pajarito Plateau assessments.*

Thank you for your attention to this important matter. If you have any questions, please feel free to contact me at 455-2273.

Neil S. Weber, Director
Department of Environmental and
Cultural Preservation
Pueblo de San Ildefonso

COMMENT SET 4 – Amigos Bravos, Taos, NM

P.O. Box 238, Taos, NM 87571
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July 3, 2008

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RE: Draft 2008-2010 303(d)/305(b) Integrated List

Dear Ms. Guevara,
Amigos Bravos is a statewide river conservation organization guided by social justice principles. Our mission is to protect and restore the rivers of New Mexico, and ensure that those rivers provide a reliable source of clean water to the communities and farmers that depend on them, as well as a safe place to swim, fish, and go boating. Amigos Bravos works locally, statewide and nationally to ensure that the waters of New Mexico are protected by the best policy and regulations possible. In this capacity Amigos Bravos works to make sure that New Mexico's water quality standards are protective enough to support the diverse human and non-human uses of our state's water resources. The 303(d)/305(b) list is a critical component of our work to protect clean water and the cultures that depend upon clean water here in New Mexico. We would like to communicate the following comments and concerns regarding the draft 2008-2010 integrated list.

Rio Pueblo de Taos – NM-2120A_511
Amigos Bravos is extremely concerned that assessment unit NM-2120A_511, Rio Pueblo de Taos (Rio Grande del Rancho to Taos Pueblo Bnd.) is listed with an IR category of 5/5B. The Rio Pueblo de Taos should retain high quality aquatic life water quality standards. Downgrading of designated uses merely because it is a challenge to reduce contaminants is unacceptable. What has NMED SWQB done to attempt to address the temperature and conductivity impairments in the Rio Pueblo? Making a determination that designated uses are not attainable because of human causes should never, in our opinion, be allowed. If this practice is going to be implemented by NMED SWQB, than it should be an absolute last resort after numerous large-scale on-the-ground efforts have been conducted in an attempt to address the impairments. Such efforts have not been conducted on the Rio Pueblo de Taos. In fact, Amigos Bravos applied for a 319 grant to begin to address these impairments on the Rio Pueblo de Taos, but our proposal was denied. TMDLs, in Amigos Bravos' opinion, do not count as a large scale on-the-ground effort to address impairment, especially if the impairment is due to NPS pollution, as are many impairments in New Mexico.

SWQB RESPONSE: *Regarding SWQB efforts to address identified impairments in the Rio Pueblo de Taos, SWQB supported a planning effort for which Amigos Bravos was the contractor. The main written deliverable of that project is at http://www.nmenv.state.nm.us/swqb/wps/WRAS/Rio_Pueblo_de_Taos_13020101_WRAS_Oct_2005.pdf. SWQB Watershed Protection Section (WPS) staff also assisted with a bacteria monitoring effort conducted by River Sentinels and Amigos Bravos, by analyzing samples from two sampling events and providing supplies. During the course of this sampling, WPS staff along with Amigos Bravos staff took advantage of opportunities to explain to the volunteers from the River Sentinels*

some concepts of water quality standards and aspects of the Clean Water Act that relate to conductivity and temperature in the Rio Pueblo de Taos.

SWQB is reviewing the current water quality criterion for specific conductance. Depending on the findings of a UAA, SWQB may propose that the criterion be changed. The public will have an opportunity to comment on the UAA and any proposed criteria changes. TMDLs have been prepared for the previously noted temperature and sediment impairments. The above mentioned reach of the Rio Pueblo de Taos is noted as 5/5B pending outcome of the upcoming triennial. See also below response regarding Category 5/5B waters.

Category 5/5B Waters

Amigos Bravos is concerned that there are 22 waters with an IR category of 5/5B and requests to receive a copy of the draft UAA for each impacted water when they are developed. Amigos Bravos does not support downgrading uses when the source of impairment is from human sources. This includes waters that were once perennial but are now intermittent due to factors related to climate change (a human source of pollution).

SWQB RESPONSE: *SWQB Monitoring and Assessment staff use IR Category 5/5B to indicate when, based on their field observations and best professional judgment, there may be a concern with the associated water quality standards, designated use, and/or criterion that needs to be considered before the bureau initiates TMDL development. This category allows SWQB time to confirm the listing and ensure the limited bureau resources are directed to true impairments that can be addressed through the TMDL process. Placement of water into IR Category 5/5B does not imply any automated or expedited change to the water quality standards. Proposed changes to water quality standards developed by SWQB include opportunity for public comment and require approval from both the WQCC and USEPA.*

List of Category Five Waters

On the first page of the explanatory note of the draft list it states that "[a] list of these Category 5 waters is included at the beginning of the draft Integrated List to assist with review." Amigos Bravos could not find such a list.

SWQB RESPONSE: *SWQB apologizes for the oversight on the draft Integrated List. This will be included on the final draft Integrated List that will be posted to the SWQB web site 10 days prior to the August 11, 2008, WQCC meeting.*

Too Many Category 2 and 3 Waters

In general, Amigos Bravos continues to be concerned that there are too many category 3 (not assessed for any uses) and category 2 (not assessed for all the uses) waters. Amigos Bravos encourages NMED to assess more waters to determine if the Livestock Watering and Contact uses are assessed.

SWQB RESPONSE: *Available resources do not allow SWQB to sample all surface waters across the state for all associated criteria. The SWQB has a monitoring strategy that describes what can be done with the resources available to the bureau. The number of waters assessed for Livestock Watering Uses has gone up each listing cycle. The number of waters assessed for Contact Uses has also gone up since SWQB acquired a mobile unit for E. coli monitoring to accommodate the short 6-hour holding time, has increased as you note in your below comment entitled " Contact and Livestock Watering Uses."*

TMDLs and Category 5 Waters

Amigos Bravos does not think that writing a TMDL should automatically take a water off of the category 5 list. TMDLs, especially for non-point source pollution, the most common pollution source in New Mexico, are for the most part a paper exercise. They do not guarantee on-the-ground improvements in water quality. Waters should only be taken off the Category 5 list if monitoring shows that there has been an improvement in water quality and all the uses are being met. Just because EPA allows waters to be taken off the Category 5 list when a TMDL has been written doesn't mean that New Mexico should engage in this practice.

SWQB RESPONSE: *SWQB agrees with your comments that Category 4A waters are still impaired. The IR Categories are automatically determined through the Assessment Database (ADB) USEPA encourages states to utilize. When TMDLs for all impaired parameters for a particular assessment unit are complete and associated with USEPA's national TMDL database, the automated category for that water becomes Category 4A. If one or more impaired parameters do not yet have associated TMDLs, the automatic category stays as 5. SWQB considers both Category 4A and 5 waters as priority waters for restoration efforts during the selection of CWA 319 projects.*

Rio Fernando

Amigos Bravos believes that the single sample secondary contact water quality criterion for E coli for the Río Fernando is still 235 cfu/100mL (as detailed in 20.6.4.123). As far as Amigos Bravos is aware, the water quality standards for Rio Fernando were not officially changed by the WQCC, and thus the criteria associated with 20.6.4.123 still apply. To downgrade the uses of the Rio Fernando, a UAA must be prepared prior to the downgrading.

Amigos Bravos believes that a change of the E.coli standard from 235 cfu/100mL to 2507 cfu/100 mL is not reasonable and is not protective of existing uses in the upper Rio Fernando. In addition, some of the sampling could very well have been above the 2507 cfu/100mL criteria since some of the levels detected were above the maximum detection level used (2419.6 cfu/100mL). By our calculations, 36% of the samples, or 15 of the 41, exceeded the standard.[1] Currently, the draft list does not list the Río Fernando as impaired for the contact use with the cause of impairment being E. coli. We believe that the Rio Fernando Study merits such a listing. The numbers were so high that if the Surface Water Quality Bureau does believe that these results merit a listing for the entire segment, a headwater segment from the Valle Escondido area upstream to the headwaters should be created and then this segment should be listed as impaired.

As mentioned above, Amigos Bravos does not think it is appropriate to downgrade uses when the causes of impairment, or intermittent flow, is from human induced causes. As climate change has more and more impacts on the waters of the New Mexico, we are going to see the flow of more streams impacted, resulting in historically perennial stream segments to periodically run dry. If NMED continues to downgrade water quality standards from perennial or segment specific protections to intermittent (20.6.4.98) or ephemeral protections (20.6.4.97) based on current flow conditions, not historic flow conditions, then many waters will lose crucial protections. In the case of the Rio Fernando, the lack of flow could very well be from the poor land management practices in the headwater segment upstream from Apache Canyon. There is much evidence of unmanaged grazing and very little riparian growth in a place that should have thick willow dominated riparian cover. The stream channel has been trampled and widened and this could very well be the reason why the flow has been reduced. The designated use of the stream should not be downgraded because of human causes such as poor land management.

1 The Rio Fernando Study in table 7 shows a calculation of 33% of the samples exceeding the standard or 14 of 42. We welcome the opportunity to discuss this discrepancy with the SWQB.

The Rio Fernando should continue to fall under 20.6.4.123 and should be listed as impaired for the contact use.

***SWQB RESPONSE**: As explained in the Response to Comment on the 2006-20008 Integrated List where this concern was previously addressed, SWQB currently bases its determination of the hydrologic nature of a stream, that is, whether it is perennial, intermittent or ephemeral according to the definitions provided in 20.6.4 NMAC, primarily through monitoring flow conditions during the survey period. SWQB will also rely on other information such as United States Geological Survey stream gage records when available. During the 2006 study mentioned above, SWQB Watershed Protection Section staff documented several sampling events when there was "no surface water present" at stations established in both the Rio Fernando de Taos above Tienditas Creek and Apache Creek. Based on these documented observations, an Assessment Unit break was established for the final draft Integrated List at Tienditas Creek where the character of the channel appears to become interrupted. According to flow observations, the upper reach of the Rio Fernando de Taos (Tienditas Creek to headwaters) does not meet the definition of perennial in 20.6.4.7.TT NMAC which states in part "…the water body contains water continuously throughout the year in all years…" Therefore, this portion of the Rio Fernando de Taos was characterized as "intermittent." As such, this assessment unit falls under 20.6.4.98 NMAC with a segment-specific single sample E. coli criterion of 2507 cfu/100 mL. Using this criterion and averaging duplicates samples as required in our Assessment Protocols, there were 1 of 20 exceedences in the upper reach of the Rio Fernando de Taos, and 1 of 16 exceedences in Apache Canyon, leading to conclusions of "Fully Supporting" for Secondary Contact uses. The other designated uses are noted as "Not Assessed" because E. coli and flow were the only parameters collected during this 2006 study.*

All data and information known to SWQB indicate that the upper reach of Rio Fernando de Taos above Tienditas Creek contains water only during certain times of the year, and therefore the assessment unit was classified as "intermittent" based on the Commission's current regulations.

The USFS Carson National Forest submitted 2007 E. coli data during the comment period on the draft Integrated List for several stations along the Rio Fernando de Taos and Apache Creek (see Comment Set 5 below). SWQB reviewed these data and re-assessed the Apache Canyon and Rio Fernando de Taos assessment units. There were no impairment conclusion changes as a result of these additional data to the Rio Fernando de Taos above Tienditas Creek or Apache Canyon. The Rio Fernando de Taos below Tienditas Creek is now listed for E. coli as a result of these data. See the Integrated List and associated Record of Decision for details.

Also, SWQB plans to release a public comment draft of proposed revisions to 20.6.4 NMAC in mid-August 2008. This proposal may contain a recommendation to lower the single sample E. coli criterion applicable to intermittent waters. If the WQCC amends the segment specific E. coli criterion at 20.6.4.98 NMAC and USEPA Region 6 approves the amendment, the data from the intermittent portions of the Rio Fernando de Taos will be re-assessed against the new criterion.

Format

As mentioned in our comments on the 2006-2008, without some form of track changes function, it is extremely difficult to track the differences in the draft 303(d)/305(b) list (hereto referred to as "draft list") from year to year. We understand that due to the format the information stored (MS Access version of the ADB), it is impossible to generate the list using the track changes function. Is it perhaps possible to indicate changes in a different manner (such as highlighting or bolding the text that is changed)?

***SWQB RESPONSE**: SWQB uses the MS Access version of the Assessment Database (ADB v.*

2.3). Unfortunately for SWQB as well, it is not possible to generate the draft Integrated List from MS Access in a Track Changes format or to highlight or bold text that is changed through this database format. SWQB does indicate at the front of every list the watersheds where the majority of changes have occurred. SWQB is also working on posting a spreadsheet version of the impaired waters (i.e., both Category 4A and 5 waters) on the NMED web site as another way to explore and search this portion of the Integrated List. The developers of ADB at USEPA are convening meetings starting this fall to improve ADB. SWQB has submitted your request to the list of requested new and improved features.

Secondary/Primary Contact

The draft list demonstrates the ongoing problem with the Surface Water Quality Bureau and Water Quality Control Commission's practice of labeling most waters with the secondary contact use and then often applying primary contact criteria at the segment level. This practice makes no sense and results in confusion by the public and I would think by the Surface Water Quality Bureau itself. In cases where the primary contact criteria are being applied, Amigos Bravos encourages NMED Surface Water Quality Bureau to label the use appropriately in the list as "primary contact". We appreciate the clarification in your response to comments in the last cycle where you stated that the assessment is performed against the segment specific criteria. But again, as mentioned in our comments from the last cycle, we believe that the practice of applying primary use criteria to a segment and then listing the segment as fully supporting secondary contact is confusing and should be remedied. When people look at the draft list and see that Secondary Contact is not being supported on the main stem of the Rio Grande through Albuquerque (NM-2105_50 and NM-2105.1_00) it is not clear if the secondary contact use is not being met, or if it is just the primary contact criteria that are associated with this segment that are not being met. Most members of the public when they read the list will assume that the secondary primary use is not being met, and this may be misleading. In general, this practice of designating the secondary contact use to segments with primary contact protections is confusing, misleading, and should be stopped. Amigos Bravos encourages NMED SWQB to address the situation during the triennial review by listing primary contact as the designated use in all segments where the primary contact criteria are applied. In the meantime, it should be clarified under assessment unit comments for waters that are not meeting the contact use if both primary contact and secondary contact criteria are not being met, or just primary contact criteria.

***SWQB RESPONSE**: SWQB shares your concern and plans to propose changes to how the contact use criteria are displayed in 20.6.4 NMAC. Additional details can be found in the public comment draft of proposed WQS changes that SWQB plans to make available to the public in mid-August 2008. Currently, SWQB does not have the resources and database tools available to clarify within the Integrated List the exact criterion related to every noted contact use impairment on the Integrated List. However, the applicable water quality standards segment (20.6.4 NMAC reference) number is presented in the "WQS Reference" box for every assessment unit on the Integrated List.*

Rio Grande through Albuquerque (NM-2105_50 and NM-2105.1_00)

Amigos Bravos is concerned with the level of impairment of the segments of the Rio Grande that run through Albuquerque. In addition we were surprised to see Fire Retardant Slurry listed a possible source of impairment – where is this source coming from?

***SWQB RESPONSE:** The weak dissociable cyanide listings for the segments of the Rio Grande are erroneous. These causes of impairment, as well as associated probable sources (including Fire Retardant Slurry) were removed from the final draft list. Following the release of the draft 2008-2010 Integrated List for public comment, a database error was realized and corrected. This error involved total cyanide data being entered into the database, and eventually assessed as, weak acid dissociable data. The weak acid dissociable form of cyanide is a component of total cyanide, but*

the two are not interchangeable. There also is no means to convert total cyanide data into weak acid dissociable cyanide data and it is the weak acid dissociable form that the water quality standards address for the designated uses on the middle Rio Grande. Therefore, assessments for the four assessment units on the Rio Grande from San Marcial to Angostura were reevaluated and the weak acid dissociable cyanide listings were removed due to insufficient data to determine impairment from weak acid dissociable cyanide.

Contact and Livestock Watering Uses

Amigos Bravos is pleased to see that most of the segments in the watersheds that were assessed during this assessment cycle were analyzed for the contact uses and livestock watering use. We hope soon that all watersheds in the state will also be assessed to determine if these uses are being met.

SWQB RESPONSE: *Thank you for your comment.*

Segment Specific Criteria

While we believe that NMED SWQB is correctly assessing the segment specific criteria Amigos Bravos is concerned that the list itself does not communicate this. Amigos Bravos would like to see the list clearly communicate whether or not the use specific criteria are being met. Would it be possible to add a category called "segment specific criteria" and then list either "fully supporting", "not supporting" or "not assessed" after it?

SWQB RESPONSE: *SWQB does not believe it is necessary or wise to add a category called "segment specific criteria." Although not clearly stated in the current 20.6.4.97 – 20.6.4.899 NMAC format, even segment-specific criteria are associated with designated uses. It is important to relay on the Integrated List which designated uses are being impaired. SWQB plans to reduce the amount of segment-specific criteria during the upcoming triennial review because many of these are not truly segment-specific and thus better noted in 20.6.4.900 NMAC with their associated designated use.*

Perennial/Intermittent

Amigos Bravos still has ongoing concerns about how the department has determined which waters are perennial and which are intermittent. How is the public able to determine which are which in the draft list? Are there cases where waters that were previously considered perennial waters in previous lists but are now considered intermittent or ephemeral? If so, how was this determination made and was a Use Attainability Analysis (UAA) done? Amigos Bravos would like an accounting of where changes in perennial to intermittent status have been made. And, because it is so difficult to review the list, especially without a track changes function, Amigos Bravos would like the department to provide an accounting of cases where changes from perennial and intermittent to ephemeral status were made.

SWQB RESPONSE: *Streams are drainage features that often may change from ephemeral to intermittent and intermittent to perennial along a gradient or continuum—sometimes with no single distinct point demarcating these transitions, so definitive assignment of hydrologic status can be challenging depending on the particular water body, drought conditions, and recent rainfall patterns. SWQB based its determination of the hydrologic nature of the water body, that is, whether it is perennial, intermittent or ephemeral according to the definitions provided in 20.6.4 NMAC, primarily through monitoring flow conditions during the survey period or special study. SWQB also relied on other information such as United States Geological Survey stream gage records when available.*

To better document decision-making related to hydrologic condition and address stakeholder and USEPA concerns regarding this issue, SWQB is in the process of developing a "Hydrology

Protocol" to better document how streams and rivers are determined to be perennial, intermittent, or ephemeral. The main purpose of the Hydrology Protocol and associated scoring form is to derive a relationship between a score and the persistence of water. This stream evaluation method is intended to distinguish (identify) ephemeral streams from intermittent streams, and intermittent streams from perennial streams, using a combination of hydrological, physical and biological characteristics of the stream or river. SWQB is working with USEPA Region 6 to determine whether or not application of this protocol will be sufficient to make these determinations for water quality standard purposes. This Hydrology Protocol will be opened for public comment prior to finalization.

Laguna Madre - NM-9000.B058 - Downgrading

NMED addressed a concern about this assessment unit being downgraded from coldwater aquatic life to warmwater aquatic life by stating that NMED SWQB "did not possess any information indicating that Coldwater Aquatic Life was truly an existing use, yet on the draft 2004 list, the coldwater aquatic life use was listed as "fully supporting". There must have been some information that indicated that this was the case. If a use is fully supported, than it is an existing use, and thus required by the Clean Water Act to be protected in the standards.

SWQB RESPONSE: *Correcting an inappropriately noted existing use does not constitute a downgrading. As stated, when SWQB took a comprehensive look at known fisheries information on publically-owned lakes and reservoirs around the state, SWQB determined that this water had erroneously been noted to have an existing coldwater fishery because there is no evidence indicating there is an existing coldwater aquatic life use. Fish species known to exist in Laguna Madre, including walleye, large mouth bass, white crappie, sunfish, channel catfish, and bullhead, are not coldwater species. Therefore, SWQB changed the noted existing use to warmwater aquatic life accordingly.*

Regarding the "fully supporting" comment, a particular use is noted as fully supporting when one or more of the associated criteria are met. This notation does not imply that all associated criteria are met. An existing use refers to a use actually attained, not to conditions that meet some of the criteria associated with the use.

Turbidity Listings

In your response to comments on the 2006-2008 list you mention that you planned on developing a turbidity assessment protocol for the generation of the 2008-2010 list, yet it does appear that a new turbidity assessment protocol has been developed. Amigos Bravos is concerned that without a turbidity assessment protocol, segments may have been listed as "fully supporting" aquatic life uses when in fact there exists too much turbidity for such a listing. As mentioned in previous comments, the historic method for testing for turbidity should be retained and implemented until a new method is developed.

SWQB RESPONSE*: SWQB also recognizes this problem and has begun drafting an interim revised assessment protocol for development of the 2010-2012 Integrated List that essentially reverts to the previous numeric turbidity criteria by associated aquatic life use. This protocol is termed "interim" because it is intended as a temporary methodology to address the narrative turbidity criterion while SWQB develops a more comprehensive approach to determining potential impairment to aquatic life due to excessive turbidity. SWQB did not have turbidity assessment protocols in place to address the narrative turbidity criterion during development of the 2006-2008 or 2008-2010 Integrated Lists due to insufficient staff resources available for this listing issue. Therefore, this interim protocol will be used to assess data that would have gone into the 2006-2008 and 2008-2010 Integrated Lists, as well as data relevant to the 2010-2012 Integrated List, in order to develop the 2010-2012 draft Integrated List.*

To develop a final revised version, SWQB intends to convene a workgroup which will utilize the stepwise approach described in Framework for Developing Suspended and Bedded Sediments (SABS) Water Quality Criteria (USEPA 2006). This approach will initially be used to develop appropriate numeric translators for New Mexico's narrative turbidity water quality criterion rather than actual numeric water quality criteria. These numeric translators may evolve into numeric water quality criteria at some point in the future.

Thank you for the opportunity to provide comment on the draft list. We look forward to further discussion about the concerns that we have raised in our comments. Please do not hesitate to contact me at 575-758-3874 or rconn@amigosbravos.org if further clarification or discussion on the above comments is merited or needed.

Sincerely,

Rachel Conn
Clean Water Circuit Rider and Policy Analyst
Amigos Bravos

COMMENT SET 5 – USFS Carson National Forest, Taos, NM

The following comments were received via email, 7/7/08:

Lynette, the Carson National Forest submits the following comments re:
Draft 303(d)/305(b) List

1) The 2006-08 303(d)/305(b) GIS layer shows Assessment Unit NM-2306.A_000 (Mora River, Hwy 434 to headwaters) as including Luna Creek and West Fork Luna Creek (mapped names on the 1:24000 Chacon Quadrangle). Please verify/clarify that NMED intends to include Luna Creek and West Fork Luna Creek in this AU.

SWQB RESPONSE: *SWQB strives to be as consistent with USGS naming protocol as possible. In response to your comment, SWQB reviewed the headwaters region of the Mora River using its most recent GIS layers and agrees that the name "Mora River" ends and the name "Luna Creek" begins in the upper drainages that feed the Mora River. Therefore, SWQB changed the Assessment Unit NM-2306.A_000 to "Mora River (Hwy 434 to Luna Creek)" and added a new Assessment Unit (NM-2306.A_001) named "Luna Creek (Mora River to headwaters)."*

2) The 2006-08 303(d)/305(b) GIS layer shows Assessment Unit NM-2120.A_410 (Rio Pueblo, Picuris Pueblo boundary to headwaters) as including Alamitos Creek (mapped name on the 1:24000 Holman Quadrangle). Please verify/clarify that NMED intends to include Alamitos Creek in this AU.

SWQB RESPONSE: *SWQB strives to be as consistent with USGS naming protocol as possible. In response to this comment, SWQB reviewed the headwaters region of the Rio Pueblo using its most recent GIS layers. While Alamitos Creek is clearly a tributary to the Rio Pueblo coming in from the west, it appears that there is still a headwaters region to the Rio Pueblo upstream of the confluence of Alamitos Creek and the Rio Pueblo that comes in from the south. Therefore, SWQB left Assessment Unit NM-2120.A_410 as "Rio Pueblo (Picuris Pueblo boundary to headwaters)" but added a new Assessment Unit (NM-2120.A_411) named "Alamitos Creek (Rio Pueblo to headwaters)" to acknowledge this tributary coming into Rio Pueblo.*

3) The Carson National Forest, in cooperation with NMED/SWQB, collected E. coli samples from Apache Canyon and the Rio Fernando de Taos in 2007. We understand that the data were not officially submitted for review. The Carson National Forest requests NMED to review these data and update the assessment unit information, as appropriate. Attached is a summary of the laboratory analysis results. Copies of the original data sheets are available, if needed.

(See attached file: Taos_Canyon_Ecoli.doc)

SWQB RESPONSE: *Thank you for submitting these data. SWQB reviewed these data and re-assessed the Apache Canyon and Rio Fernando de Taos assessment units. There were no impairment conclusion changes as a result of these additional data to the Rio Fernando de Taos above Tienditas Creek or Apache Canyon. The Rio Fernando de Taos below Tienditas Creek is now listed for E. coli as a result of these data. See the Integrated List and associated Record of Decision for details.*

Zigmund M. Napkora, Hydrologist
Carson National Forest
208 Cruz Alta Road
Taos, NM 87571

505.758.6311
znapkora@fs.fed.us

COMMENT SET 6 – City of Farmington, NM

July 7, 2008

Lynnette Guevara
NMED SWQB
Room N2163
P.O. Box 26110
Santa Fe, New Mexico 87502

Re: Comments to 303 (d) and 305(b) listings

Dear Ms. Guevara:

The City of Farmington welcomes this opportunity to comment on the 2008-2010 State of New Mexico Clean Water Act 303(d) and 305(b) Integrated List during this comment period ending July 9, 2008. The City strongly supports the New Mexico Environment Department's efforts of improving the State's water quality and puts forward the following comments.

Farmington's drinking water source is water diverted from the Animas River into Lake Farmington, also known as Beeline Reservoir. The document *Public Comment Draft 2008 - 2010 State* of *New Mexico Clean Water Act 303(d) and 305(b) Integrated List* identifies current impairments to this water body that may prevent its identified uses' attainability. Impairments listed include algae and mercury. Identified uses for this water body include drinking water supply, fishing, livestock watering, and wildlife habitat.

Both documents recommend Farmington Lake be listed as its own Water Quality Standard Segment. The City can support this concept but reserves the right to give comment into the development of those water quality standards. The City supports the removal of livestock as a designated use of the reservoir. The City supports the designated uses of municipal water supply, coldwater/warmwater aquatic life, and wildlife habitat.

SWQB RESPONSE: *SWQB plans to propose a separate water quality standard segment for Lake Farmington during the upcoming triennial review. A public comment draft should be released to the public in mid- August 2008.*

Both documents identify mercury in fish tissue as a cause for concern and have noted consumption guidelines due to mercury contamination. Per USEPA guidance, these advisories demonstrate nonattainment of CWA goals stating that all waters should be "fishable." Therefore, the impaired designated use is the associated aquatic life even though human consumption of the fish is the actual concern. The City believes the source of this contamination is airborne; therefore, a total maximum daily load (TMDL) for the water body would be difficult to impose or enforce.

SWQB RESPONSE: *Thank you for your comment. SWQB has not yet scheduled TMDL development for impairment due to mercury in fish tissue.*

An Animas River TMDL has been established for fecal coliform. However, there has not been a TMDL established *E. coli* as stated in the document. The City recommends this reference to an E Coli TMDL be removed.

SWQB RESPONSE: *There are no references to any E. coli TMDLs for either Animas River assessment unit on the draft 2008-2010 Integrated List or associated ROD. Concurrent E. coli and fecal coliform monitoring during the 2002 SWQB intensive watershed survey did not indicate E. coli impairment in the Animas River.*

Previous sampling events and observations have identified algae Farmington Lake impairments at times. Both documents identify the City as controlling algae with copper sulfate. The City does not now, and has not for many years, used copper sulfate to control algae growth. The City recommends that this be noted in the

documents.

SWQB RESPONSE: *The comment regarding the use of copper sulfate was removed from both the draft 2008-2010 Integrated List and the associated ROD.*

Again, the City does appreciate this opportunity to comment on these documents.

Sincerely,

Jeffrey J. Smaka, P.E.
Water / Wastewater Administrator and Acting Public Works Director.

Cc: Rob Mayes, City Manager
Paul A. Montoia, Water Resource Specialist
Ron Rosen, OMI CH2MHill
Monica Peterson, OMI CH2MHill

COMMENT SET 7 – Taos County Commission, Taos, NM

ADMINISTRATIVE OFFICE of the TAOS COUNTY COMMISSION

COUNTY
COMMISSIONERS
DANIEL R. BARRONE
CHARLIE I. GONZALES
GABRIEL J. ROMERO
NICKLOS E. JARAMILLO
JOE M. DURAN

June 30, 2008

Lynette Guevara, Assessment Coordinator
Surface Water Quality Bureau
New Mexico Environment Department
P.O. Box 26110
Santa Fe, NM 87502
via email: lynette.guevara@state.nm.us

RE: Comments on integrated CWA 303d1305b List

Dear Ms. Guevara:

Taos County has recently developed and adopted several community water and natural resource planning processes. Through the New Mexico Subdivision Act, counties and municipalities have the authority to plan for and implement public welfare, health and safety.

Throughout the various community water and natural resources planning processes the highest community values and goals identified were those that revolve around senior water rights, irrigated lands, healthy watersheds and secure and safe community domestic water sources.

Taos County has been improving its ability to monitor ground water through partnerships with the Taos Soil and Water Conservation District and the New Mexico Bureau of Geology and Mineral Resources at NM Tech. Although there has been much monitoring done on some watersheds such as the Red River we are concerned that many surface waters in Taos County go unmonitored.

Specifically, almost all of the assessment units in Taos County have not been assessed to determine whether the livestock watering and recreation water quality standards are being met. Clean water for irrigation and recreation is essential to ensure a strong and healthy culture and economy in Taos County.

We urge NMED SWQB to assess more of the streams in Taos County for livestock watering and recreation standards as soon as possible, and, where the streams are not meeting water quality standards, provide technical assistance in identifying and addressing the problem as many people still utilize the acequias for their drinking water.

The County's overall position is that county-wide monitoring should eventually be achieved through intergovernmental and community organization to assure the ability to irrigate with our table survey being done with the TSWCD, Taos County has been developing comprehensive Aquifer mapping surveys.

NMED should plan, fund and implement comprehensive surface water quality monitoring in Taos County. Areas such as Penasco, Taos Canyon, Hondo Canyon, Rio Chiquito, Pot Creek, Talpa,

Miranda Water Sheds and the Red River have critical municipal drinking water watersheds that provide for community wells. Watershed and stream health above these important recharge areas are the highest priority for Taos County protecting it residents and their water resources.

SWQB RESPONSE: *SWQB will be conducting a survey of the Upper Rio Grande watershed in 2009. This survey area will cover surface waters in Taos County. Your specific list of waters of concern above will be passed on to SWQB Monitoring and Assessment survey planning staff.*

Regarding assessments for recreation (contact) uses, the water quality criterion associated with contact use is bacteria. It was fecal coliform in previous versions of 20.6.4 NMAC, and is now E. coli. Therefore, if there were no available bacteria data, SWQB indicated "Not Assessed" for this designated use. Bacteria sampling has a 6-hour holding time. In the past, it was very difficult to collect and deliver samples for bacteria analyses to the State Laboratory Division in Albuquerque within the holding time. SWQB's Monitoring and Assessment Section recognized this problem and purchased the necessary equipment to analyze for E. coli in the field as this equipment became available for purchase and recognized by USEPA as an acceptable method. This new field procedure for bacteria was implemented during the 2006 field season. During the upcoming Upper Rio Grande survey (2009), SWQB will be able to collect and analyze E. coli data using this mobile unit. Water quality criteria associated with livestock uses will also be collected during the 2009 survey as available resources allow.

There are some particular concerns that we would like to draw to NMED SWQB's attention. Water quality sampling from headwater stream on federal-property is showing indications of water quality problems such as e-coli, possibly from public lands grazing. This raises a concern for down stream water users who depend on clean water from headwater streams to recharge their wells.

Specifically, the Rio Fernando is the recharge area for several of the Town of Taos drinking water wells and many private residential wells in Taos Canyon. Since water quality is in question, Taos County's position is that the Rio Fernando should warrant further consistent monitoring.

In addition, Taos County is concerned that water quality Standards in the upper Rio Fernando watershed have been weakened. Strong protections for the County's drinking water supply are essential for protecting public health and safety. The Rio Fernando has always had consistent perennial flows and it should be protected as such.

Taos County urges NMED SWQB to restore historic water quality standard protections of primary contact to the upper portions of the Rio Fernando (assessment units NM-98.A_002 and NM 98.A_001). With these historic protections in place, these two assessment units may not be meeting water quality standards, and, if this is indeed the case, Taos County urges NMED SWQB to correctly list the these assessment units as impaired and to then address the source of pollution.

SWQB RESPONSE*: SWQB currently bases its determination of the hydrologic nature of a stream, that is, whether it is perennial, intermittent or ephemeral according to the definitions provided in 20.6.4 NMAC, primarily through monitoring flow conditions during the survey period. SWQB will also rely on other information such as United States Geological Survey stream gage records when available. During the 2006 study mentioned above, SWQB Watershed Protection Section staff documented several sampling events when there was "no surface water present" at stations established in both the Rio Fernando de Taos above Tienditas Creek and Apache Creek. Based on these documented observations, an Assessment Unit break was established for the final draft Integrated List at Tienditas Creek where the character of the channel appears to become interrupted. According to flow observations, the upper reach of the Rio Fernando de Taos (Tienditas Creek to headwaters) does not meet the definition of perennial in 20.6.4.7.TT NMAC*

which states in part "…the water body contains water continuously throughout the year in all years…" Therefore, this portion of the Rio Fernando de Taos was characterized as "intermittent." As such, this assessment unit falls under 20.6.4.98 NMAC with a segment-specific single sample E. coli criterion of 2507 cfu/100 mL. Using this criterion and averaging duplicates samples as required in our Assessment Protocols, there were 1 of 20 exceedences in the upper reach of the Rio Fernando de Taos, and 1 of 16 exceedences in Apache Canyon, leading to conclusions of "Fully Supporting" for Secondary Contact uses. The other designated uses are noted as "Not Assessed" because E. coli and flow were the only parameters collected during this 2006 study.

All data and information known to SWQB indicate that the upper reach of Rio Fernando de Taos above Tienditas Creek contains water only during certain times of the year, and therefore the assessment unit was classified as "intermittent" based on the Commission's current regulations.

The USFS Carson National Forest submitted 2007 E. coli data during the comment period on the draft Integrated List for several stations along the Rio Fernando de Taos and Apache Creek (see Comment Set 5). SWQB reviewed these data and re-assessed the Apache Canyon and Rio Fernando de Taos assessment units. There were no impairment conclusion changes as a result of these additional data to the Rio Fernando de Taos above Tienditas Creek or Apache Canyon. The Rio Fernando de Taos below Tienditas Creek is now listed for E. coli as a result of these data. See the Integrated List and associated Record of Decision for details.

Also, SWQB will be releasing a public comment draft of proposed revisions to 20.6.4 NMAC in mid-August 2008. This proposal may contain a recommendation to lower the single sample criterion applicable to intermittent waters. If the WQCC amends the segment specific E. coli criterion at 20.6.4.98 NMAC and USEPA Region 6 approves the amendment, the data from the intermittent portions of the Rio Fernando de Taos will be re-assessed against the new criterion.

The Penasco area is another Taos County area at high risk of surface and ground water contamination due to the fact the there are many small traditional unincorporated communities established in the various stream floodplains that contribute to NPS through individual septic systems which are often faulty.

SWQB RESPONSE: *SWQB will be conducting a survey of the Upper Rio Grande watershed in 2009. This survey area will cover surface waters in Taos County. Your concern above will be passed on to SWQB Monitoring and Assessment survey planning staff.*

The recently adopted Taos Regional Water Plan assessed these community priorities and the above cited areas have been identified for improved water quality monitoring.

Sincerely,

Charlie I. Gonzales,
Chairman
Taos County Board of Commissioners

COMMENT SET 8 – New Mexico Farm & Livestock Bureau, Las Cruces, NM

July 8, 2008

Ms. Lynette Guevara
NMED-SWQB
Rm N2163
P.O. Box 26110
Santa Fe, New Mexico 87502

Re: Comments to the Draft 2008-2010 List of Assessed Surface Waters

Dear Ms. Guevara:

Thank you for the opportunity to review the above referenced document.

As indicated in the Clean Water Act, agriculture is a non-point source and a designated use. Non-point sources implement best management practices through voluntary incentive-based initiatives such the Environmental Quality Incentive Program, Conservation Reserve Program and water conservation techniques. American Agriculture is critical to our national security by ensuring the independence of our food supply. It is essential that our state regulators understand this and do everything within their power to work with our producers to sustain agriculture in our nation through proactive outreach, communication, and collaboration.

The draft document indicates that in some cases the probable source of impairment is due to rangeland grazing. We believe this to be an assumption that excludes other possible causes for any impairment that may exist. You must recognize if there is stream impairment that wildlife would also have a significant effect on the water quality.

***SWQB RESPONSE**: The Probable Sources list is intended to include any and all activities that could be contributing to the identified impairment. It is not intended to single out any particular land owner or single land management activity, and has therefore been labeled "Probable" and generally includes several possible items. Probable sources listed for any particular water body have not been proven to be the only source(s) of the identified impairment. It is generally based on qualitative field observations combined with knowledge of known land management activities that have the potential to contribute to the identified impairment. One of the primary reasons SWQB solicits public comment on the integrated 303(d)/305(b) list is so entities and individuals living and working in particular watersheds can provided specific information regarding Probable Sources of impairment that may have not been identified by SWQB staff.*

USEPA through guidance documents requires states to include a list of Probable Sources for each listed impairment. According to the 1998 305(b) report guidance, "…, states must always provide aggregate source category totals…" in the biennial submittal that fulfills CWA section 305(b)(1)(C) through (E) (USEPA 1997). "Sources" are defined as activities that may contribute pollutants or stressors to a water body (USEPA 1997). The 2006 Integrated Report guidance states that all states must submit to USEPA a description of the nature and extent of nonpoint source pollution, as well as state-level summaries of causes and sources of impaired waters (USEPA 2005). The term "probable" to describe sources is specifically noted in Appendix A of the 2006 Intregrated Report Guidance (USEPA 2005).

SWQB has requested that USEPA Region 6 provide clarity on the exact CWA 303d and 305b requirements related to Probable Source reporting. USEPA is also in the process of developing

guidance for development of the 2010-2012 Integrated CWA 303d/305b List and Report – Probable Sources is on its agenda because the need for clarity, additional methods, and additional resources to identify Probable Sources is not unique to New Mexico. States and USEPA have made vast improvements in monitoring and assessment methods used to accurately identify causes of impairment over the last decade, while source identification continues to generally be based on a qualitative field observations combined with knowledge of known land management activities that have the potential to contribute to the identified impairment in most cases.

References:
USEPA. 1997. Guidelines for preparation of the comprehensive state water quality assessments (305(b) reports) and electronic uptakes. EPA-841-B-97-002A. Washington, D.C.

USEPA. 2005. Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act. Office of Water, Washington, D.C.

The document addresses irrigated agriculture being identified as a probable source of impairment. This data may be flawed. We suggest monitoring station locations need to be revaluated. Monitoring techniques and stations need to be downstream and not at the tailgate where the water is released. We know that water quality varies by time, location, and depth (e.g., shallow or deep portion of a stream or reservoir and distance from any source) and this should be considered in data collection.

We request a meeting with the monitoring staff in order to discuss our concerns and obtain an understanding of the monitoring techniques and protocols used in the development of this document.

***SWQB RESPONSE**: Chemical, physical, and biological data from water quality monitoring stations are used to determine causes of impairment (i.e., the parameter of concern such as E. coli, temperature, or sedimentation/siltation), not the probable sources of the identified impairment. SWQB generally located monitoring stations at the downstream end of assessment units in an attempt to be representative of water quality conditions in that particular assessment since water flows downhill. SWQB does not strive to nor has the resources to establish water quality monitoring stations in agricultural tailgates around the state. All of SWQB's monitoring and assessment techniques are available on the SWQB website at: http://www.nmenv.state.nm.us/SWQB/MAS/index.html If you would like additional clarity, please contact the Monitoring and Assessment Program Manager, Jane DeRose Bamman, at 505-476-3671 or via email at jane.derosebamman@state.nm.us to set up a meeting time that works for your organization.*

Thank you for your consideration of our comments and request. If you should have any questions, please contact our Director of Governmental Affairs, Cecilia Abeyta at (505) 660-7417, or me.

Sincerely,

John F. Wortman, Jr.
Executive Vice President

COMMENT SET 9 – US Fish and Wildlife Service, Albuquerque, NM

July 7, 2008

Lynette Guevara, Assessment Coordinator
New Mexico Environment Department
Surface Water Quality Bureau – Room N2163
P.O. Box 26110
Santa Fe, New Mexico 87502

Dear Ms. Guevara:

Thank you for the opportunity to comment on the draft 2008-2010 State of New Mexico Integrated Clean Water Act (CWA) Sections 303(d)/305(b) List of Assessed Surface Waters (Integrated List). The Integrated List identifies whether or not a particular surface water of the state is currently meeting its designated or existing uses as detailed in the State of New Mexico Standards for Interstate and Intrastate Surface Waters (20.6.4 NMAC [New Mexico Annotated Code]). Specifically, the Integrated List identifies whether surface waters are designated as "Category 5," that is, the Integrated List identifies waters or portions thereof (assessment units) that have degraded quality and suggests probable causes and sources of the impairments identified. The U.S. Fish and Wildlife Service (Service) provides the following comments to the Integrated List available from the New Mexico Environment Department (NMED) Surface Water Quality Bureau's website: < http://www.nmenv.state.nm.us/swqb/303d-305b/2008-2010/index.html>.

Probable Sources of Impairment

On pages 279-281 of the Integrated List, "waterfowl" are listed as sources of impairment for a number of assessment units (e.g., NM-2105_50, the Rio Grande from Isleta Pueblo boundary to Alameda Street Bridge; or, NM-2105_40, the Rio Grande from Rio Puerco to Isleta Pueblo boundary). We recommend that where appropriate, "avian sources" be identified as a potential source, rather than "waterfowl." While waterfowl have been reported as sources of coliform bacteria to surface waters (e.g., Roll and Fujioka 1997), other avian sources can include pigeons (i.e., rock doves [*Columba livia*]) (Oshiro and Fjioka 1995), as well as chickens, turkeys and domestic ducks (Metcalf and Eddy, Inc. 1991). Additionally, Parsons Inc., (2005) reported on the Middle Rio Grande Microbial Source Tracking Project that identified specific sources of fecal coliform causing high levels of bacteria in these assessment units of the Middle Rio Grande. They concluded that resolution of the avian sources to the species level did not appear to be practical. While some species of *E.coli* are seen only in waterfowl, many strains of *E. coli* in the avian gut have been commonly found in many different bird species (Parsons 2005). Where appropriate, we suggest using the term "avian sources" rather than "waterfowl" both to reflect the available information, but also so that the public does not immediately focus management options on waterfowl to the exclusion of other potential avian sources. For example, where pigeons have been identified as one of the avian sources of concern, the use of falconry or other activities can be employed as best management practices to reduce their populations and therefore their coliform loads to surface waters. Where appropriate, identifying potential sources of coliform to surface waters as "avian sources" rather than "waterfowl" on the Integrated List may result in the public, as well as water quality managers, identifying more appropriate management options from avian sources of coliform bacteria.

SWQB RESPONSE: *The Probable Source term "Waterfowl" has been changed to "Avian Sources (waterfowl and/or other)." SWQB also passed on this suggestion to USEPA so that this change could be made nationally through an update to the Assessment Database probable source table.*

San Jose Drain Assessment Unit

We recommend that the San Jose Drain be included on the Integrated List as a Category 5 assessment unit in the Middle Rio Grande near Albuquerque, New Mexico. The San Jose Drain is a storm water conveyance channel that empties into the South Diversion Channel which enters the Rio Grande (SWCA 2004). According to SWCA (2004), water from the Rio Grande frequently backs up and pools as far as 1.25 miles (2 km) during spring runoff and is partially lined with riparian vegetation suitable for wildlife. The New Mexico Environment Department (NMED) and the Los Alamos National Laboratory (LANL) in a cooperative study collected water and sediment from the San Jose Drain in 2002-2003 (Yanicek 2006). There were 2 of 2 measured polychlorinated biphenyl (PCB) concentrations (0.014 to 0.026 ug/L) that equaled or exceeded the Wildlife Habitat Criterion (0.014 ug/L), as well as exceed the Human Health criterion for PCBs (0.00064 ug/L).

Furthermore, the PCBs conveyed in the storm water discharges may also impair the quality of fish in the Rio Grande downstream, which may affect fish as well as lead to fish consumption advisories and therefore affect the public health and welfare. As the NMED/LANL cooperative study did not collect fish tissues below the San Jose Drain, we applied a simplistic bioaccumulation model for fish accumulation of PCBs in their tissues from the water column using USEPA (1980). This approach is simplistic because it does not include sediment transfer (discussed below), but it is applicable for relative comparison purposes when data are sparse. The USEPA (1980) identified that the accumulation rate in fish tissues from PCBs in the water column was 31,200 L/kg. Therefore, discharges of PCBs from the San Jose Drain could result in fish tissue concentrations from 0.4 to 0.9 mg/kg total PCBs. Using the USEPA (2000; Table 4-24) fish consumption guidelines, *no* consumption of these fish would be recommended.

While fish integrate PCBs over all conditions, time, and food variations, there are indications that the PCBs in the San Jose Drain have settled into the sediment and therefore represent a recurring source to the Rio Grande with every flood conveyed. Sediment collected on June 10, 2003, from the San Jose Drain during the NMED/LANL cooperative study, showed substantial PCB contamination (196 ug/kg). These concentrations were greater than the threshold for effects to benthic fauna (40 ug/kg) reported by MacDonald et al. (2000).

In summary, adequate data on PCB contamination found in the San Jose Drain and likely conveyed to the Rio Grande indicate that the designated and existing Wildlife Habitat use is not free from any substances at concentrations that are toxic to or will adversely affect plants and animals that use these environments for feeding, drinking, habitat or propagation; can bioaccumulate; or might impair the community of animals in a watershed or the ecological integrity of surface waters of the State of New Mexico. Therefore, as the San Jose Drain assessment unit is impaired for one or more existing uses, the Service recommends that it be included on the Integrated List as a Category 5 water body.

SWQB RESPONSE: *The bureau has historically not assessed drains. Alternatively, when surface water quality data and other information are available for drains, the bureau has noted these data and information in documents such as survey reports and TMDLs as possible sources and/or contributors to identified impairments in the downstream receiving assessment unit as appropriate.*

Removing Stream Bottom Deposits as a Probable Cause for Impairment

Additionally, we reviewed the Record of Decision for the Integrated List and found that in 1998, the Middle Rio Grande and the Rio Puerco were previously listed as “not fully supporting the use of limited warmwater fishery” with the cause of not meeting this use listed as “stream bottom deposits.” Upon a request of the NMED, both the Service’s New Mexico Fishery Resources Office (Brooks 1998) and New Mexico Ecological Services Field Office (Fowler-Propst 1998) provided

comments (copies of these letters are attached). We encourage the NMED to review these letters in context and ascertain whether sufficient data were provided in them in order to determine whether the existing and designated uses of the Middle Rio Grande and Rio Puerco were impaired by stream bottom deposits or other if other factors were also identified. We note that when segments of the San Juan River were listed as impaired due to stream bottom deposits on the Integrated List, the NMED contracted the US Department of Agriculture's National Sedimentation Laboratory to evaluate the severity of bed-material conditions along these reaches relative to "background" or "natural" conditions (Heins et al. 2004). Therefore, we encourage the NMED to continue to explore issues of erosion, sedimentation and the effects sediment transport (or lack thereof) on the fisheries of the Middle Rio Grande and in other sandbed stream systems in New Mexico in order to better define what conditions would be considered impaired and how they might be better managed.

SWQB RESPONSE: *Both of the attached letters, Brooks 1998 and Fowler-Propst 1998, were reconsidered per your request. The letters state that they do not believe there are sufficient data to determine whether or not aquatic life uses are impaired due to excessive sedimentation/siltation in the Middle Rio Grande or the intermittent portions of the Rio Puerco. Both of the letters are not supportive of TMDL efforts and do not believe they would be effective for the middle and lower Rio Grande with respect to fisheries resources because the scientific information on the appropriate levels of suspended sediments and siltation in these systems are lacking. The original 1998 stream bottom deposit listings were not based on quantitative data applied against assessment protocols which is the appropriate method of listing and de-listing waters. SWQB's current sedimentation/siltation assessment protocol available at http://www.nmenv.state.nm.us/swqb/protocols/d.pdf was developed for cobble-bottom, wadeable streams only because the data and information used to develop this protocol are from this type of aquatic system. The protocol is not applicable to sandy-bottom or intermittent streams as stated in the front of the protocol. SWQB continues to explore the issues of erosion, sedimentation, and sediment transport and established a sedimentation workgroup to revise the existing sedimentation protocol with the assistance of USEPA. SWQB will solicit public comment on these revisions.*

If you have any additional questions, please contact David Campbell at 505-761-4745.

Sincerely,

Wally Murphy
Field Supervisor

cc:
Director, New Mexico Department of Game and Fish, Santa Fe, NM
Project Leader, USFWS, New Mexico Fishery Resources Office, Albuquerque, NM
Water Quality Coordinator, U.S. Fish and Wildlife Service, Region 2, Albuquerque, NM

Literature Cited

Brooks, J. 1998. January 9, 1998, Letter to Dr. James H. Davis, from Project Leader James E. Brooks, US Fish and Wildlife Service, New Mexico Fishery Resources Office, Albuquerque, NM.

Fowler-Propst, J. 1998. February 10, 1998, Letter to James H. Davis, Ph.D., Chief, from Field Supervisor Jennifer Fowler-Propst, US Fish and Wildlife Service, New Mexico Ecological Services Field Office, Albuquerque, NM.

Heins, A., A. Simon, L. Farrugia, and M. Findeisen. 2004. Bed-Material Characteristics of the San Juan River and Selected Tributaries, New Mexico: Developing Protocols for Stream-Bottom Deposits. USDA National Sedimentation Laboratory, Research Report Number 47, Oxford, MS

MacDonald, D.D., L.M. DiPinto, J. Field, C.G. Ingersoll, E.R. Long, and R.C. Swartz. 2000b. Development and evaluation of consensus-based sediment effect concentrations for polychlorinated biphenyls (PCBs). Environmental Toxicology and Chemistry 19:1403-1413.

Metcalf and Eddy, Inc.. 1991. Wastewater Engineering: Treatment, Disposal, Reuse. 3rd ed. McGraw-Hill, Inc., New York, NY.

Oshiro, R. and R. Fujioka. 1995. Sand, soil, and pigeon droppings: sources of indicator bacteria in the waters of Hanauma Bay, Oahu, Hawaii. Water Science Technology 31(5-6):251-254.

Parsons (Parsons Water & Infrastructure Inc.). 2005. Middle Rio Grande Microbial Source Tracking Assessment Report. Report prepared for New Mexico Environment Department Albuquerque Metropolitan Arroyo Flood Control Authority and Bernalillo County; available at the website: <http://www.nmenv.state.nm.us/swqb/Rio_Grande/Middle/MST/index.html>. Parsons Water & Infrastructure Inc, Austin, TX.

Roll, B.M. and R.S. Fujioka. 1997. Sources of faecal indicator bacteria in a brackish, tropical stream and their impact on recreational water quality. Water Science Technology 35(11-12):179-186.

SWCA (SWCA Environmental Consultants). 2004. Maintenances of Existing and Future Storm Water Conveyances in the Middle Rio Grande. SWCA Project No. 6479 Report prepared for Albuquerque Metropolitan Arroyo Flood Control Authority, Southern Sandoval County Arroyo Flood Control Authority, City of Albuquerque and Bernalillo County, SWCA Environmental Consultants, Albuquerque, NM.

USEPA. 1980. Ambient Water Quality Criteria for PCBs. USEPA 440/5-80-068, Washington, DC.

USEPA. 2000. Guidance for Assessing Chemical Contamination Data for Use in Fish Advisories. Volume 1: Fish Sampling and Analysis, and Volume 2: Risk Assessment and Fish Consumption Limits. U.S. Environmental Protection Agency Report EPA 823-B-97-009, Third Edition, Cincinnati, OH.

Yanicek, S. 2006. June 6, 2006, Letter to G. Turner, Subject: 2002-2003 Cooperative Polychlorinated Biphenyl (PCB) Study Data. NMED DOE Oversight Bureau, White Rock, NM.

COMMENT SET 10 – Pueblo of Santa Ana, NM

PUEBLO OF SANTA ANA
OFFICE OF THE GOVERNOR

July 7, 2008
Ms. Lynette Guevara
New Mexico Environment Depal1ment
Surface Water Quality Bureau
P.O. Box 26110, Room N2163
Santa Fe, NM 87502

Re: Review comment for the Draft 2008-2010 State of New Mexico Integrated Clean Water Act (CWA) Section 303(d)/305(b) List of Assessed Surface Waters (Integrated List)

Dear Ms. Guevara:

The Pueblo of Santa Ana conducted an evaluation of the "New Mexico Draft 2008-2010 State of New Mexico Integrated Clean Water Act (CWA) Section 303(d)/305(b) List of Assessed Surface Waters (Integrated List)" and hereby provides comments for your review.

The Pueblo's technical staff reviewed the document and found an inaccuracy on page 258 of 473 of the document for the List of Assessed Surface Waters (see enclosed copy). We respectfully request that the heading *Jemez River (San Felipe to Santa Ana Pueblo boundary)* be changed. The concern is that San Felipe Pueblo and Santa Ana Pueblo share a common boundary; however the boundary doesn't exist near the Jemez River. San Felipe Pueblo's land is located north of Santa Ana Pueblo and not near the area indicated by NMED. Therefore, because the reach of the Jemez River is located exclusively on Santa Ana Pueblo, it should not be included in the Integrated List.

SWQB RESPONSE: *Thank you for pointing out this oversight. The assessment unit "Jemez River (San Felipe to Santa Ana Pueblo boundary)" has been deleted from NM's Integrated List.*

The Pueblo values its partnership with the New Mexico Environment Depal1ment to protect all of our natural resources. If you have any questions regarding the Pueblo's input, please contact Jennifer Wellman, Water Resources Division Manager, at (505) 771-6754. We appreciate the opportunity to comment on the draft New Mexico Draft 2008-2010 State of New Mexico Integrated Clean Water Act (CWA) Section 303(d)/305(b) List and we look forward to working with you in the future.

Sincerely,

Pueblo of Santa Ana
Ulysses G. Leon, Governor

Enclosure

COMMENT SET 11 – San Juan Water Commission, Farmington, NM

July 9, 2008

Ms. Lynette Guevara
Surface Water Quality Bureau
New Mexico Environment Department
P.O. Box 26110
Santa Fe, NM 87502

Via e-mail (*lynette.guevara@ state.nm.us*) and U.S. mail

Re: Comments of San Juan Water Commission on Draft 2008-2010 State of New Mexico Clean Water Act Integrated Sections 303(d)/305(b) List of Assessed Surface Waters

Dear Ms. Guevara:

Pursuant to the public notice of a 30-day comment period on the New Mexico Environment Department's ("NMED") draft 2008-2010 State of New Mexico Clean Water Act Integrated Sections 303(d)/305(b) List of Assessed Surface Waters ("Draft Section 303(d) List"), I hereby submit the following comments to NMED on behalf of the San Juan Water Commission ("SJWC").

First, with respect to the Draft Section 303(d) List as a whole, SJWC appreciates all of the hard work NMED has put into assessing the State's surface waters and developing the Draft Section 303(d) List. In particular, SJWC commends NMED for continuing to prepare a Draft Record of Decision ("ROD") supporting the Draft Section 303(d) List. The clarity of the ROD's descriptions of historic and current actions pertaining to individual stream segments is very helpful to stakeholders attempting to track and understand listing and/or de-listing actions, TMDL development, and other Clean Water Act issues. SJWC understands that the ROD is a voluntary document and is not an official requirement of the Clean Water Act, but encourages NMED to continue preparing the ROD in the future.

Second, with respect to stream segments in the San Juan River Basin, SJWC has the following specific comments:

1. The re-categorization of certain Basin waters (Navajo Reservoir, Lake Farmington, and San Juan River from Navajo boundary at Hogback to the Animas River) as 5/5C waters appropriately recognizes the lack of data for TMDL development and other important decision-making issues. SJWC is pleased to see NMED recognize instances where scientific data is inadequate when making decisions about stream impairment. Improper impairment determinations based on inadequate or no data can have longstanding adverse consequences on economic development, including future water use, because of resulting TMDL requirements, the need to perform a use attainability analysis to "downgrade" a designated use, and other restrictions on activities in, on or near a waterbody.

2. Following EPA Region 6 instruction, NMED added warmwater aquatic life as an "assumed" existing designated use for Gallegos Canyon (San Juan River to Navajo boundary) and marginal warmwater aquatic life as an "assumed" existing designated use for Shumway Arroyo (San Juan River to Ute Mountain Ute boundary). Notwithstanding EPA's instruction, does NMED have any data to support the actual existence of these newly designated uses in Gallegos Canyon and Shumway Arroyo?

SWQB RESPONSE: *Thank you for pointing out the problematic use of the phrase "assumed existing use." Neither SWQB nor USEPA assumes existing uses for these waters or other waters covered by sections 20.6.4.97-99. However, USEPA is guided by a rebuttable presumption that Clean Water Act Section 101(a)(2) aquatic life uses are attainable in all waters unless a use attainability analysis has demonstrated otherwise. In its Record of Decision on New Mexico's 2005 amendments to the WQS, EPA was not satisfied that the designated uses and associated criteria in sections 20.6.4.97-99 met the Section 101(a)(2) objective. Until the questions are resolved, USEPA presumes either marginal warmwater or warmwater aquatic life uses, which do meet the Section 101(a)(2) objective, are attainable for these waters. SWQB is preparing a proposal for the next triennial review to address these sections. For the purposes of the 2008-2010 Integrated List, SWQB has changed these AU Comments to read "presumed uses" and revised the "What's New" paragraph at the beginning of the document to clarify the situation.*

3. With respect to Gallegos Canyon (San Juan River to Navajo boundary), please provide the scientific basis for the change in the impairment status of the aquatic life designated use from "not assessed" in the 2006-2008 Section 303(d) List to "fully supporting" in the Draft Section 303(d) List. Perhaps the reason for the change should be noted in the ROD.

SWQB RESPONSE: *The basis for the change was the assessment of pH data previously provided by the SJRIP during the 2004 listing cycle after the applicable WQS citation changed from "unclassified" to 20.6.4.99. For the 2006 listing cycle, there were no presumed uses for this AU that would have resulted in application of a pH criterion – Aquatic Life was added but it had no associated pH criteria. Per EPA Region 6 instruction on the 2008 Integrated List, WWAL was added as a presumed use to all waters falling under 20.6.4.99 NMAC. There were 0 of 60 recorded pH values taken by SJRIP outside of the criteria range of 6.6 to 9.0. Therefore, WWAL was noted as "fully supporting" on the 2008 Integrated List. SWQB added clarification to the ROD per your request.*

4. For at least five stream segments in the San Juan River Basin, NMED has added a comment concerning the identification of mercury in fish tissue as a probable cause of impairment. Does either NMED or EPA have a protocol for conducting TMDLs for mercury in fish tissue? If so, SJWC recommends that the protocol be referenced in the Assessment Unit Comments. If not, SJWC recommends that NMED note in the ROD that a protocol will be developed in advance of the 2017 timeline for developing the TMDL. More generally, SJWC objects to the listing of these stream segments as impaired on the basis of mercury in fish tissue unless the stream segments violate surface water quality standards for mercury. SJWC suggests that, rather than identify a stream as impaired in the Section 303(d) List on the basis of fish consumption advisories, NMED simply identify such streams in the ROD.

SWQB RESPONSE: *There are a few examples of TMDLs for mercury in fish tissue from other states. SWQB has not yet scheduled TMDL development for impairment due to mercury in fish tissue, so has not assigned staff resources to look further into this issue at this time. SWQB does not believe it is necessary to add a note to the ROD or Assessment Unit Comments at this time.*

As stated in the SWQB Assessment Protocols (available at: http://www.nmenv.state.nm.us/swqb/protocols/index.html), per USEPA listing guidance, USEPA considers fish or shellfish consumption advisories and supporting fish tissue data to be existing and readily available data that demonstrate non-attainment of CWA goals stating that waters should be "fishable" (CWA Section 101[a]).

References:
USEPA. 2005. Guidance for 2006 assessment, listing and reporting requirements pursuant

to sections 303(d), 305(b), and 314 of the Clean Water Act. Watershed Branch, Assessment and Watershed Protection Division, Office of Wetlands, Oceans, and Watersheds. Washington, D.C. Available at: http://www.epa.gov/owow/tmdl/2006IRG/report/2006irg-report.pdf

5. NMED notes that it will propose changing the coldwater aquatic life designated use for the Animas River (Estes Arroyo to the Colorado border) in an upcoming Triennial Review because the designated use may not be existing or attainable. This note also appeared in the 2006-2008 Section 303(d) List. Does NMED plan to propose changing or removing this designated use in the anticipated 2009 Triennial Review? If so, SJWC would support such a change and requests that NMED share its proposal and provide all data it plans to use in support of its proposal.

SWQB RESPONSE: *SWQB Monitoring and Assessment staff use IR Category 5/5B and the AU Comments field to indicate when, based on their field observations and best professional judgment, there may be a concern with the associated water quality standards, designated use, and/or criterion that needs to be considered. Placement of water into IR Category 5/5B does not imply any automated or expedited change to the water quality standards. Proposed changes to water quality standards developed by SWQB include opportunity for public comment and require approval from both the WQCC and USEPA. SWQB WQS staff did take a preliminary look at 20.6.4.404 NMAC, but due to time constraints did not have time to perform a complete analysis for the upcoming triennial.*

6. SJWC supports NMED's removal of all references to the bioassay-toxicity listings in the TMDL schedules and the assessment unit comments for the Animas River (San Juan River to Estes Arroyo) (for sediment bioassays-acute toxicity freshwater) and the San Juan River (Animas River to Cañon Largo) (for ambient bioassays-acute aquatic toxicity). As you may recall, in its May 2004 written comments on the Draft 2004-2006 Section 303(d) List, SJWC objected to the listing of these two stream segments based on the results of bioassays because a bioassay is not a water quality standard, and bioassay results showing toxicity do not identify the violation of any particular water quality standard. Further, the purpose of the Section 303(d) List is to identify waters requiring TMDLs, and a TMDL cannot be developed for a bioassay. Thus, SJWC agrees with NMED's comments in the ROD that data is insufficient to support the conclusion that the water and sediment bioassays provide probable causes of impairment for these two steam segments.

7. With respect to Jackson Lake, please explain the basis for stating the secondary contact designated use is "not assessed." In the 2006-2008 Section 303(d) List, Jackson Lake was noted to be "fully supporting" the secondary contact designated use.

SWQB RESPONSE: *Jackson Lake was erroneously noted as Fully Supporting for secondary contact use on the 2006 Integrated List. SWQB only collected one suite of bacteria samples during the 2002 survey which is not enough to determine impairment status.*

8. NMED notes that the marginal coldwater aquatic life designated use for the La Plata River (San Juan River to McDermott Arroyo) "is likely not an existing or attainable use . . . ." This note also appeared in the 2006-2008 Section 303(d) List. Does NMED plan to propose changing or removing this designated use in the anticipated 2009 Triennial Review? If so, SJWC would support such a change and requests that NMED share its proposal and provide all data it plans to use in support of its proposal.

SWQB RESPONSE: *SWQB Monitoring and Assessment staff use IR Category 5/5B and the AU Comments field to indicate when, based on their field observations and best professional judgment, there may be a concern with the associated water quality standards, designated use, and/or*

criterion that needs to be considered. Placement of water into IR Category 5/5B does not imply any automated or expedited change to the water quality standards. Proposed changes to water quality standards developed by SWQB include opportunity for public comment and require approval from both the WQCC and USEPA. SWQB WQS staff did take a preliminary look at 20.6.4.402 NMAC, but due to time constraints did not have time to perform a complete analysis for the upcoming triennial.

9. The notes concerning the San Juan River (Navajo boundary at Hogback to the Animas River) indicate that the marginal coldwater aquatic life designated use "may not be an appropriate use since the goal of the San Juan River Implementation Plan study and proposed change in Navajo Dam operations is to protect and improve habitat for warmwater fish in this reach." This note also appeared in the 2006-2008 Section 303(d) List. As NMED is aware, this stream segment includes critical habitat for the federally endangered Colorado pikeminnow and razorback sucker, both of which are warmwater species. Therefore, the river is indeed being managed in a manner designed to recover these species. Does NMED therefore plan to propose changing or removing the marginal coldwater aquatic life designated use in the anticipated 2009 Triennial Review? If so, SJWC would support such a change, and SJWC requests that NMED share its anticipated proposal and all data it plans to use in support of its proposal.

SWQB RESPONSE: *SWQB Monitoring and Assessment staff use IR Category 5/5B and the AU Comments field to indicate when, based on their field observations and best professional judgment, there may be a concern with the associated water quality standards, designated use, and/or criterion that needs to be considered. Placement of water into IR Category 5/5B does not imply any automated or expedited change to the water quality standards. Proposed changes to water quality standards developed by SWQB include opportunity for public comment and require approval from both the WQCC and USEPA. This particular AU was labeled as 5/5C due to the Mercury in Fish Tissue listing, so it was not included in the list of 5/5B waters the SWQB WQS team looked into for the upcoming triennial.*

Thank you for your consideration of these comments. If further discussion would be helpful, please do not hesitate to contact me. I look forward to receiving the information requested concerning upcoming Triennial review plans with respect to designated uses that may not be existing, attainable or appropriate in the Animas, La Plata and San Juan Rivers.

Sincerely,

L. Randy Kirkpatrick

COMMENT SET 12 – Bureau of Land Management, Taos, NM

(received via email)

Dear Ms. Guevara,

Thank you for providing the Bureau of Land Management Taos Field Office this opportunity to comment on the draft State of New Mexico Integrated Clean Water Act Sections 303(d)/ 305(b) List of Assessed Surface Waters.
Overall, I saw no serious problems and only have a few comments relative to our management areas:

NM-2120.A_902 Rio San Antonio (CO border to Montoya Canyon) - Although listed as fully supporting, this stream segment dries during summer

***SWQB RESPONSE**: SWQB is in the process of developing a Hydrology Protocol that will be used to document whether a particular assessment unit is most appropriately classified as perennial, intermittent, or ephemeral. This will assist in verifying the applicable water quality standard segment for assessment purposes. SWQB plans to survey the Upper Rio Grande watershed in 2009. Your concern will be passed on to the survey planning staff for that effort to ensure application of the Hydrology Protocol.*

NM-2116.A_050 Rio Cebolla (Rio Chama to headwaters) - Per note in list, it was also dry May 2008 when BLM visited to survey

***SWQB RESPONSE**: See above response regarding verification of hydrologic status. SWQB will add this assessment unit to the list of waters needing the Hydrology Protocol to verify the status.*

NM-2110_00 Santa Fe River (Cochiti Pueblo bnd to Santa Fe WWTP)- Listed as IR 5/4A, but no such category identified in document

***SWQB RESPONSE**: The listed IR category of 5/4A is incorrect. It has been corrected to 5/5A*

NM-2111_40 Embudo Creek (Canada de Ojo Sarco to Picuris Pueblo bnd) - Impariment does not match with BLM surveys that indicate excellent cold water fish habitat, which would imply good macroinvertebrate fauna (perhaps assessment size over estimates impact?)

***SWQB RESPONSE**: According to the 2004 entry in the Record of Decision, SWQB performed a benthic macroinvertebrate survey using Rio Santa Barbara at the Santa Barbara Campground as a reference. The bio score was 59% of reference, with 9% fines. Therefore, benthic macroinvertebrate bioassessments was be added as a cause of non support based on application of the 2004 Assessment Protocols. SWQB plans to survey the Upper Rio Grande watershed in 2009. Your concern and reference to your available data will be passed on to the Monitoring and Assessment Section survey planning staff.*

NM-2119_10 Red River (Rio Grande to Placer Creek) - For upcoming assessment, suggest that surface waters near fish hatchery be tested for Molybdenum

***SWQB RESPONSE**: SWQB plans to survey the Upper Rio Grande watershed in 2009. Your concern and reference to your available data will be passed on to the Monitoring and Assessment Section survey planning staff.*

NM-2118.A_52 Rio Quemado (Santa Cruz River to Rio Arriba Cnty bnd) - IR Category 2/5C is unclear.

***SWQB RESPONSE**: The listed IR category of 2/5C is incorrect. It has been corrected to 2 only.*

Also, the map connection in the PDF version is very helpful and would be even better if there were a return link at the bottom of pages to toggle back and forth.

***SWQB RESPONSE**: Thank you for the suggestion. Our web master will look into this possibility.*

Please let me know if the BLM can be of any help during future assessments.

Sincerely,

Greg Gustina
Fish Biologist
BLM New Mexico

COMMENT SET 13 – New Mexico Cattle Growers' Association, Albuquerque, NM

August 8, 2008

New Mexico Environment Department
Surface Water Quality Bureau
Room N2163
Attn: Lynette Guevara
P.O. Box 26110
Santa Fe, New Mexico 87502

FAX: 505.827.0160
EMAIL: lynette_guevara@nmenv.state.nm.us

RE: New Mexico Environment Department (NMED), Surface Water Quality Bureau (SWQB) 2006-2008 State of New Mexico Clean Water Act (CWA) §303(d)/§305(b) INTEGRATED LIST

Dear Ms. Guevara:

Thank you for the opportunity to comment on the above captioned draft. The New Mexico Cattle Growers' Association (NMCGA) has membership in 33 of New Mexico's counties as well as 14 additional states. NMCGA requests that due to the length and technical nature of the above captioned draft there be an extension of the comment period for a minimum of 60 days with public meetings scheduled to inform the public of the Integrated List and the possible effects it can have on the waters contained within it. These meetings are further necessary due to the majority of the public most impacted by the reaches placed on the Integrated List are without means of access to the on-line version of the draft, unable to print the some 454 page Integrated List and the 299 Record of Decision (ROD), or the technical background to decipher the meaning or impact of the documents.

NMCGA has the following comments for your review and consideration:

- The revision to the source list classification "Rangeland (unmanaged pasture) Grazing" to "Rangeland Grazing" is progress towards incorporating the impact waterfowl, riparian grazing elk, and other forms of wildlife have on certain water quality parameters. However, the explanation that these migratory, grazing, and living patterns are more difficult too observe than that of livestock, "wildlife are more elusive than livestock" (response from April 9, 2007 comments) is a superimposed and statistically unsupported. It is fair to admit that it would be difficult to attempt to guess where these wildlife populations have the heaviest concentration. However, the New Mexico Game and Fish Department as well as the New Mexico Forest Service maintain up-to-date observation records of migratory patterns and regional population numbers for a wide range of wildlife residing in New Mexico. These statistics are utilized by these organizations to determine hunting permits and allocation of federal grazing land. It would appear that with the use of these statistics the New Mexico Environment Department (NMED) and the Surface Water Quality Bureau (SWQB) could effectively deduce "areas of concern" that deserve "visual observation" to determine the effects wildlife has on water quality in New Mexico streams, rivers, and watersheds.

SWQB RESPONSE: *Thank you for the suggestion. See below reponse regarding identification of Probable Source.*

- It was clear that <u>all</u> surface water in the state is included in the Integrated list, not just impaired waters, and the clarification to the reason that some listed designated use are classified "not assessed" raised additional questions. First, if the reason these designated

uses are marked as "not assessed" is there is not sufficient scientific data to support a more concrete classification why is this classification found on several water sources classified as impaired waters. Without scientific evidence to support an impaired water classification leads to the conclusion that certain waters in the state have received a negative classification under pretenses supported more by opinion rather than scientific fact. Further clarification on why this practice is in place would resolve this skepticism. Secondly, many of the water sources that are included in the Integrated List have not been reassessed in over five years. It is understood that these assessments are routinely conducted, and some, but not all, designate the next assessment year. For waters classified as impaired and have not been assessed in several years does not demonstrate a good faith effort to determine the progress landowners, agriculturalists, and New Mexico residents have taken to improve the quality of water in these water sources.

SWQB RESPONSE: *Individual designated uses for a particular assessment unit are noted as "not assessed" when there are insufficient (n=1) or no reliable monitored data available to determine if <u>any</u> of the numeric or narrative criteria associated with that particular designated use are being met. For example, if there are no bacteria data available to assess, the associated Contact Use would be noted as "not assessed." This does not imply in any way that SWQB does not have adequate data to assess the other associated designated uses for a particular assessment unit.*

The amount of surface water quality monitoring SWQB is able to conduct each year is dependent primarily on funding received from federal Clean Water Act sources. SWQB develops rotational, watershed monitoring schedules that account for available funding. SWQB returns to watersheds to monitor changes in water quality on a routine basis as soon as resources allow.

- On page 7 and page 8 of the State's responses from previous comments, there was an understanding that there would be steps taken to receive additional feedback, comments, and information from landowners and residents near New Mexico waters to further the effectiveness of the State's water assessment process. When and where did either the NMED or SWQB conduct town hall meetings, comment submissions, or public forums to gather this promised information?

- Lastly, it was advised that the SWQB Watershed Protection Section were developing an outreach program in response to the comments submitted on April 7, 2008:

"It would also seem helpful to the process to involve landowners and the trade organizations that represent them in educational opportunities regarding the Integrated List and other NMED water related activities, such as Watershed Restoration Action Strategy (WRAS) and Total Maximum Daily Loads (TMDL). Additionally, NMED distributes 319 grant funding from the USEPA in New Mexico, and perhaps a more diverse approach can be implemented when distributing these funds. This could involve landowners by encouraging them to be proactive in promoting their current resource protection activities and incorporating greater efficiency with new management tools. In addition, landowners will have the necessary information on the listed segments in their areas, the process of listing segments, the process of de-listing segments; and the practices in their operations that have or will minimize run-off and protect water and land resources."

NMCGA is not aware of any steps taken by the SWQB Watershed Protection Section to implement educational opportunities to land owners and trade organization. NMCGA also is unaware of any protocols that diversify the process that NMED distributes grant funding. When and how has either the NMED or SWQB taken steps regarding educational opportunities or diversifying grant funding distribution?

SWQB RESPONSE: *With respect to Probable Sources (which was the context of SWQB's responses to your above comments on the 2006 Integrated List), due to time constraints and resource limitations SWQB was unable to solicit comments from all watershed stakeholders during development of the 2008-2012 integrated list. SWQB has requested that USEPA Region 6 provide clarity on the exact CWA 303d and 305b requirements related to Probable Source reporting. USEPA is also in the process of developing guidance for development of the 2010-2012 Integrated CWA 303d/305b List and Report – Probable Sources is on its agenda because the need for clarity, additional methods, and additional resources to identify Probable Sources is not unique to New Mexico. States and USEPA have made vast improvements in monitoring and assessment methods used to accurately identify causes of impairment over the last decade, while source identification continues to generally be based on a visual analysis combined with knowledge of known land management activities that have the potential to contribute to the identified impairment in most cases.*

With respect to education and outreach in general, outreach is a fundamental component of the entire Clean Water Act (CWA) Section 319 program/watershed group approach, and as such, SWQB Watershed Protection Staff (WPS) implement outreach and educational activities on a routine basis. WPS CWA 319 Project Officers often serve as a link between grass-roots watershed restoration efforts and the entire NMED. TMDLs, the Integrated List, and water quality standards are very common topics at watershed group meetings. Formal presentations are routinely provided by SWQB staff. However, informal communication/assistance between CWA 319 Project Officers and watershed stakeholders is constant. This assistance is not limited to water quality issues either. For example, Project Officers routinely provide watershed stakeholders with access to information about other NMED programs such as solid/liquid waste and/or groundwater quality. The Watershed Group approach, in and of itself, is largely dependent on outreach and the SWQB WPS view these grass-roots organizations as the most efficient means for formally and informally disseminating information about NMED issues, programs, and requirements.

SWQB urges NMCGA and NMWGI to participate in these local grass-roots efforts. Your input is a valued addition to that received from local cattle ranchers. SWQB is confident the needs of rural communities are best served when information and resources are made locally and readily available. Formal presentations are an important component of that strategy. However, there is no substitute for the ongoing and informal dialog that occurs between CWA 319 Project Officers and watershed stakeholders.

Regarding grant funding distribution, SWQB's administration of the CWA 319 grant is consistent with SWQB and USEPA CWA 319 programmatic targets. The competitive process is consistent with the New Mexico's Procurement Code. SWQB targets water quality constituents and fund projects that best reflect programmatic goals and that are most likely to achieve results.

Thank you again for the opportunity to comment on the above captioned draft. The New Mexico Cattle Growers' Association (NMCGA) appreciates the need to safeguard water quality based on assessment standards that incorporate sound, reputable science.

Sincerely,

Caren Cowan

Executive Director
New Mexico Cattle Growers' Association
P.O. Box 7517
Albuquerque, New Mexico 87194
505.247.0584 phone
505.842.1766 fax
nmcga@nmagriculture.org email
cc: Water Quality Control Commission

COMMENT SET 14 – New Mexico Wool Growers' Incorporated, Albuquerque, NM

(SWQB RESPONSE: The below letter from the New Mexico Wool Growers' Incorporated is a replicate of the above letter received from the New Mexico Cattle Growers Association in Comment Set 13. Therefore, please refer to Comment Set 13 for SWQB Responses.)

New Mexico Environment Department
Surface Water Quality Bureau
Room N2163
Attn: Lynette Guevara
P.O. Box 26110
Santa Fe, New Mexico 87502

FAX: 505.827.0160
EMAIL: lynette_guevara@nmenv.state.nm.us

RE: New Mexico Environment Department (NMED), Surface Water Quality Bureau (SWQB) 2006-2008 State of New Mexico Clean Water Act (CWA) §303(d)/§305(b) INTEGRATED LIST

Dear Ms. Guevara:

Thank you for the opportunity to comment on the above captioned draft. The New Mexico Wool Growers, Inc. (NMWGI), New Mexico's oldest livestock trade organization. NMWGI requests that due to the length and technical nature of the above captioned draft there be an extension of the comment period for a minimum of 60 days with public meetings scheduled to inform the public of the Integrated List and the possible effects it can have on the waters contained within it. These meetings are further necessary due to the majority of the public most impacted by the reaches placed on the Integrated List are without means of access to the on-line version of the draft, unable to print the some 454 page Integrated List and the 299 Record of Decision (ROD), or the technical background to decipher the meaning or impact of the documents.

NMWGI has the following comments for your review and consideration:

- The revision to the source list classification "Rangeland (unmanaged pasture) Grazing" to "Rangeland Grazing" is progress towards incorporating the impact waterfowl, riparian grazing elk, and other forms of wildlife have on certain water quality parameters. However, the explanation that these migratory, grazing, and living patterns are more difficult too observe than that of livestock, "wildlife are more elusive than livestock" (response from April 9, 2007 comments) is a superimposed and statistically unsupported. It is fair to admit that it would be difficult to attempt to guess where these wildlife populations have the heaviest concentration. However, the New Mexico Game and Fish Department as well as the New Mexico Forest Service maintain up-to-date observation records of migratory patterns and regional population numbers for a wide range of wildlife residing in New Mexico. These statistics are utilized by these organizations to determine hunting permits and allocation of federal grazing land. It would appear that with the use of these statistics the New Mexico Environment Department (NMED) and the Surface Water Quality Bureau (SWQB) could effectively deduce "areas of concern" that deserve "visual observation" to determine the effects wildlife has on water quality in New Mexico streams, rivers, and watersheds.

- It was clear that <u>all</u> surface water in the state is included in the Integrated list, not just impaired waters, and the clarification to the reason that some listed designated use are classified "not assessed" raised additional questions. First, if the reason these designated uses are marked as "not assessed" is there is not sufficient scientific data to support a more

concrete classification why is this classification found on several water sources classified as impaired waters. Without scientific evidence to support an impaired water classification leads to the conclusion that certain waters in the state have received a negative classification under pretenses supported more by opinion rather than scientific fact. Further clarification on why this practice is in place would resolve this skepticism. Secondly, many of the water sources that are included in the Integrated List have not been reassessed in over five years. It is understood that these assessments are routinely conducted, and some, but not all, designate the next assessment year. For waters classified as impaired and have not been assessed in several years does not demonstrate a good faith effort to determine the progress landowners, agriculturalists, and New Mexico residents have taken to improve the quality of water in these water sources.

- On page 7 and page 8 of the State's responses from previous comments, there was an understanding that there would be steps taken to receive additional feedback, comments, and information from landowners and residents near New Mexico waters to further the effectiveness of the State's water assessment process. When and where did either the NMED or SWQB conduct town hall meetings, comment submissions, or public forums to gather this promised information?

- Lastly, it was advised that the SWQB Watershed Protection Section were developing an outreach program in response to the comments submitted on April 7, 2008:

"It would also seem helpful to the process to involve landowners and the trade organizations that represent them in educational opportunities regarding the Integrated List and other NMED water related activities, such as Watershed Restoration Action Strategy (WRAS) and Total Maximum Daily Loads (TMDL). Additionally, NMED distributes 319 grant funding from the USEPA in New Mexico, and perhaps a more diverse approach can be implemented when distributing these funds. This could involve landowners by encouraging them to be proactive in promoting their current resource protection activities and incorporating greater efficiency with new management tools. In addition, landowners will have the necessary information on the listed segments in their areas, the process of listing segments, the process of de-listing segments; and the practices in their operations that have or will minimize run-off and protect water and land resources."

NMWGI is not aware of any steps taken by the SWQB Watershed Protection Section to implement educational opportunities to land owners and trade organization. NMWGI also is unaware of any protocols that diversify the process that NMED distributes grant funding. When and how has either the NMED or SWQB taken steps regarding educational opportunities or diversifying grant funding distribution?

Thank you again for the opportunity to comment on the above captioned draft. The New Mexico Wool Growers Incorporated (NMWGI) appreciates the need to safeguard water quality based on assessment standards that incorporate sound, reputable science.

Sincerely,

Joan Kincaid
President
New Mexico Wool Growers' Incorporated
P.O. Box 7517

Albuquerque, New Mexico 87194
505.247.0584 phone
505.842.1766 fax
NMWGI@nmagriculture.org email
cc: Water Quality Control Commission

COMMENT SET 15 – Rebecca Perry-Piper, Ponderosa, NM

(INSERTED SCAN OF RECEIVED HANDWRITTEN LETTER)

(copy retained)

(16)

RECEIVED
JUL 10 2008
SURFACE WATER
QUALITY BUREAU

July 7, 2008
135 Rincon Valverde
Ponderosa, NM
87044-9500

Lynette Guevara
Assessment Coordinator
New Mexico Environment Department
Surface Water Quality Bureau
1190 South St Francis Drive
Room N2050
P.O. Box 26110
Santa Fe, New Mexico
87502-6110

Sent to Lynette Guevara, Assessment Coordinator, NMEDSWQB, Via USPSCMR 7006 2150 0002 8839 6971 7-8-08
Edward J. Perry, Pipn

Dear Assessment Coordinator Guevara,

Thank you for your letter of response to my June 26, 2007 letter of non-technical written public comment on New Mexico Environment Department Surface Water Quality Bureau's Draft 2008-2010 State of New Mexico Integrated Clean Water Act Sections 303(D)/305(B) List of Assessed Surface Waters.

July 7, 2008

I could not find a date on your response letter, but the stamp on it's envelope indicated it was mailed from "87505" on "7/02/08".

My amended non-technical written public comment on document mentioned in the first sentence of this 7-7-08 letter to you, Assessment Coordinator Guevara, is as follows:

-beginning-

"Clear Creek, above, around and below San Gregorio Lake, is a headspring rito that is dying, not a "bog". In the local vernacular, it's tortured bed may be texturally "boggy", but the results of the death of this segment of this water body identifior; due to its being dammed to create San Gregorio Lake and diverted into Nacimiento Creek and away from the Río Jemez System into the Río

sent to Lynette Guevara, Assessment Coordinator, NMED SWQB, via USPS CMR 7006 2150 0002 8839 6971, 7-8-08
Stephen J. Perry

NEW MEXICO
ENVIRONMENT DEPARTMENT

Surface Water Quality Bureau

1190 South St. Francis Drive, Room N2050
P.O. Box 26110, Santa Fe, NM 87502-6110
Phone (505) 827-0187 Fax (505) 827-0160
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BILL RICHARDSON
Governor
DIANE DENISH
Lieutenant
Governor

RON CURRY
Secretary
JON GOLDSTEIN
Deputy Secretary

Rebecca Perry-Piper
135 Rincon Valverde
Ponderosa, NM 87044

Dear Ms. Perry-Piper:

Per your requested in your June 26, 2007, letter, I am writing to let you know that historically the Integrated Report has not been released for 30-day public comment. We have not called for public comment on the Integrated Report in the past and do not plan to call for public comment on the 2008-2010 Integrated Report.

Sincerely,

Lynette Guevara,
Assessment Coordinator
505.827.2904

Sent to Lynette Guevara, Assessment Coordinator, NMEDSWQB, via USPS CMR 7006 2150 0002 8839 6771 7-8-08
Rebecca J. Perry-Piper

(continued) July 7, 2008

Puerco System, as well as the scene of its demise, being located above 2,000 - 3,000 feet above sea level and more than a hundred miles from a Great Lake, a bay or an ocean, do not constitute its being identified as a bog hydrological model/ecosystem.

Public funding dedicated to restoration should be used to fill-in San Gregorio Lake and accurately re-allocate acre-feet to the Río Jemez System by recreating Clear Creek's course from headsprings prior to the making of San Gregorio Lake. New Mexico Environment Department Surface Water Quality Bureau should refrain from using the word "bog" in describing a drained rito bed. Public funding dedicated to wetland restoration could be erroneously spent due to this unscientific mislabeling. Steve Fischer,

Sent to Lynette Guevara, Assessment Coordinator, NMEDSWQB, via USPS Mail 786 2150 0002 8834 6971 7-8-08
Steve Fischer

(continued) July 7, 2008

Bureau of Land Management/Río Puerco Management Committee (RPMC), wisely stressed the following presentation statements of Brad Lamb, Environmental Protection Agency (EPA) Region 6 Dallas, in the May 9, 2008 RPMC meeting minutes summative:

'When you take money from other people you are accountable to them. Right now, the measure EPA is looking for is 'water bodies restored'.''

Please correctly identify this drained rito so that it will be restored to its course and acre-feet.

Though I am still awaiting the timely surface-mailing of the 2008-2010 Integrated Report associated with afore-mentioned New Mexico Environment

sent to Lynette Guevara, Assessment Coordinator, NMED SWQB, via USPS CMR 7006 2150 0002 8839 6971 7-8-08

(continued) July 7, 2008

Department Surface Water Quality Bureau's Draft 2008-2010 State of New Mexico Integrated Clean Water Act Sections 303(D)/305(B) List of Assessed Surface Waters. I thank Assessment Coordinator Guevara, New Mexico Environment Department, Surface Water Quality Bureau, for informing me; on, or around, July 2, 2008; that:

'Per your requested in your June 26, 2007, letter, I am writing to let you know that historically the Integrated Report has not been released for 30-day public comment. We have not called for public comment on the Integrated Report in the past and do not plan to call for public comment on the 2008-2010 Integrated Report.'

(For-the-record, it was a June 26, 2008 letter that she received.)

Sent to Lynette Guevara, Assessment Coordinator, NMEDSWQB, via USPS/MR 7006 2150 0002 8839 6971 7-8-08
Helen G. Berry, PhD

(continued) July 7, 2008

However, I find the reasoning, as well as its being the sole reasoning, that New Mexico Environment Department Surface Water Quality Bureau will not call for a 30-day public comment period on the 2008-2010 Integrated Report because 'historically' such has not been done, or because public servants do not plan to call for public comment, is inadequate reasoning.

Recently, New Mexicans have been informed that Southwestern Public Service owes their fellow citizens, or themselves, 100,000 to be exact; $15 million dollars due to the way New Mexico Public Regulation Commission "historically" allowed regulators to look at the assignment of fuel costs. I demand that New Mexico Water Quality Control Commission prevent

sent to Lynette Guevara, Assessment Coordinator / NMED SWQB,
via USPS CMR 7006 2150 0002 8839 6971, 7-8-08
Rebecca J. Perry-Ryan

(continued) July 7, 2008

the 2008-2010 Integrated Report associated with New Mexico Environment Department Surface Water Quality Bureau's Draft 2008-2010 State of New Mexico Integrated Clean Water Act Sections 303(D)/305(B) List of Assessed Surface Waters from being authorized for presentation to U.S. Congress until its contents have been released for a 30-day comment by New Mexicans. This call for public comment on the 2008-2010 Integrated Report must be printed in the Legals Section of the Albuquerque Journal, in a timely manner; prior to the beginning of the comment period or on the day the comment period begins. A full surface-mailing address; replete with contact name, physical address including zipcode; should be contained in said legal.

sent to Lynette Guevara, Assessment Coordinator, NMEDSWQB via USPS CMR 7008 2150 0002 8836 6971 7-8-08 [illegible]

(continued) July 7, 2008

In light of what New Mexicans are daily finding out has been done to them "historically", stakeholders in the Río Jemez System want a full accounting of what is intended for every acre-foot presently in said río system and for every acre-foot that needs to be returned. Please consider this my official request for a hearing on this matter of a 30-day public comment period on said 2008-2010 Integrated Report as well as my Notice of Intention to Appear.

Respectfully,

Rebecca G. Perry-Piper

Rebecca G. Perry-Piper
135 Rincon Valverde
Ponderosa, New Mexico
87044-9500

-end-

sent to Lynette Guevara, Assessment Coordinator, NMED SWQB, via USPS CMR 7006 2750 0002 8839 6977 7-8-08
Rebecca G. Perry-Piper

SWQB RESPONSE: *The reference to the term "bog" in the AU Comment for the San Gregorio Lake on the draft Integrated List was removed. There are no references to the term "bog" in the Clear Creek entry on the Integrated List or in the associated Record of Decision.*

Per Dave Allen, USFS Santa Fe National Forest Cuba Ranger Station, the San Gregorio Lake was created in 1947 to modulate flows in the Nacimiento Ditch. The water rights to the reservoir have been owned by NM Game and Fish since 1957 and the water rights for the associated Nacimiento Ditch are owned by the Nacimiento Ditch Association prior to the inception of the USFS. The USFS maintains the reservoir for these entities. Your request for restoration via filling in the reservoir needs to be directed to the water rights holders and the USFS. SWQB does not have the authority to implement this type of restoration activity.

Regarding the request for a public hearing regarding a public comment period on the draft Integrated Report, your request was forwarded to the Water Quality Control Commission as they are the entity that decides whether or not to grant public hearings on these topics.