



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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SURFACE WATER  
QUALITY BUREAU

James H. Davis, Ph.D.  
Bureau Chief  
Surface Water Quality Bureau  
New Mexico Environment Department  
1190 St. Francis Drive  
Santa Fe, New Mexico 87502

Dear Dr. Davis:

Thank you for submitting New Mexico's 2002 section 303(d) list of water quality limited water bodies. The EPA has conducted a complete review of this submittal, dated September 25, 2002, and supporting documentation and information. Based on its review, the EPA has determined that New Mexico's 2002 section 303(d) list of water quality limited segments (WQLs) still requiring total maximum daily loads (TMDLs) meets the requirements of section 303(d) of the Clean Water Act ("CWA" or "the Act") and the EPA's implementing regulations. Therefore, by this action, the EPA hereby approves New Mexico's 2002 section 303(d) list. The statutory and regulatory requirements, and a summary of the EPA's review of New Mexico's compliance with each requirement, are described in the enclosure to this letter.

Although no such waters have been identified, EPA's approval of New Mexico's section 303(d) list extends to all water bodies on the list with the exception of those waters that are within Indian Country, as defined in 18 U.S.C. § 1151. The EPA is taking no action to approve or disapprove the State's list with respect to those waters at this time. The EPA, or eligible Indian Tribes, as appropriate, will retain responsibilities under section 303(d) for those waters.

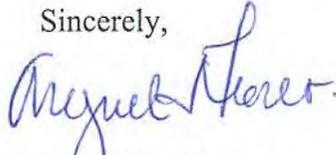
In addition, some of the waters listed on New Mexico's 2002 section 303(d) list are impaired by radioactive materials. The radioactive materials in question may have a range of sources, including, for example, residues from wildfires or naturally occurring radionuclides, which may not be subject to regulation under the Atomic Energy Act of 1954, §1 *et seq.* as amended, 33 U.S.C.A. § 1251 *et seq.* (AEA). This is important because the EPA's regulations define "pollutant" to include radioactive materials except those regulated under the AEA. See Train v. Colorado Public Interest Research Group, 426 U.S. 1, 96 S.Ct. 1938, 48 L.Ed.2d 434 (1976); 40 C.F.R. § 122.2 (definition of "pollutant"). The EPA interprets section 303(d) of the CWA to require EPA establishment or approval of section 303(d) lists or TMDLs only for "pollutants." Therefore, the EPA approves New Mexico's listings as consistent with section 303(d) and the Agency's implementing regulations, insofar as these waters are listed for radioactive materials that are "pollutants" under the CWA as defined by the EPA's regulations. If a radioactive material for which a water is listed is not a "pollutant" under the CWA, there would be no obligation to establish or approve a TMDL for such material.

New Mexico's 303(d) submission includes 208 water body segments and 452 water body-pollutant combinations. The State listings are based on assessment methodologies and data and information described in the State submittal. The EPA acknowledges and supports the State's approach of retaining on the list all previously listed waters until new data and information are available to support a change in their assessment. Priority rankings for all listed waters have been established by New Mexico as required by section 303(d) and its implementing regulations. Priorities have been established based on the severity of pollution and the uses assigned to those waters. Sixty-one water bodies are targeted for TMDL development in the next two years, consistent with the targeting requirement of 40 C.F.R. § 130.7(b)(4).

The public participation process sponsored by the New Mexico Environment Department (NMED) included solicitations of public comment through newspaper advertisements, several public meetings, mailing lists, and web site postings. A responsiveness summary, prepared by the state, explained how the State considered public comment in the final listing decisions.

We commend you for your efforts to develop the 2002 section 303(d) water body list and for being so responsive to our clarification requests. Documentation supporting the EPA's determinations in this matter are contained in the administrative record for this action. If you have questions on any of the above information, feel free to give me a call at 214-665-7101 or call Willie Lane at 214-665-8460.

Sincerely,



Miguel I. Flores  
Director  
Water Quality Protection Division

Enclosure