



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

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DALLAS, TX 75202-2733

NOV 2 2000

Dr. James H. Davis, Chief  
Surface Water Quality Bureau  
New Mexico Environment Department  
P.O. Box 26110  
Santa Fe, NM 87502

Re: Approval of New Mexico's 2000 §303(d) List

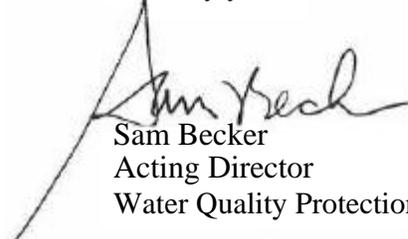
Dear Dr. Davis:

The Environmental Protection Agency (EPA) has conducted a complete review of New Mexico's 2000 Section 303(d) list and supporting documentation and information, and based on this review, EPA has determined that New Mexico's 2000 list of water quality limited segments (WQLSs) still requiring TMDLs meets the requirements of Section 303(d) of the Clean Water Act ("CWA" or "the Act") and EPA's implementing regulations. Therefore, by this order, EPA hereby approves New Mexico's 2000 Section 303(d) list. The statutory and regulatory requirements, and EPA's review of New Mexico's compliance with each requirement, are described in detail below.

Our approval of New Mexico's §303(d) list extends to all waterbodies on the list with the exception of those waters that are within Indian country, as defined in 18 U.S.C. Section 1151. EPA, or eligible Indian Tribes, as appropriate, will retain responsibilities under Section 303(d) for those waters.

We look forward to continuing to work with the State of New Mexico to utilize the TMDL program in the State's water quality planning and management activities. If you have any questions or comments regarding the TMDL program, please contact me at 214-665-7100 or Willie Lane of my staff at 214-665-8460.

Sincerely yours,

  
Sam Becker  
Acting Director  
Water Quality Protection Division

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SURFACE WATER  
QUALITY BUREAU

cc: Peter Maggiore

## ATTACHMENT A

Pursuant to the listing requirements in the Clean Water Act § 303(d) and the Water Quality Planning and Management Regulations (40 CFR 130), the State of New Mexico has submitted listing actions for year 2000 to EPA for approval. This document describes the basis for EPA's decision to approve New Mexico's list of water quality limited waters still requiring TMDLs and its associated priority rankings.

### **Statutory and Regulatory Background**

EPA has reviewed the State's submission, and has concluded that the State developed its Section 303(d) list in compliance with Section 303(d) of the Act and 40 CFR 130.7. EPA's review is based on its analysis of whether the State reasonably considered existing and readily available water quality-related data and information and reasonably identified waters required to be listed.

#### Identification of WQLSs for Inclusion on Section 303(d) List.

Section 303(d)(1) of the Act directs States to identify those waters within its jurisdiction for which effluent limitations required by Section 301(b)(1)(A) and (B) are not stringent enough to implement any applicable water quality standard, and to establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters. The Section 303(d) listing requirement applies to waters impaired by point and/or nonpoint sources, pursuant to EPA's long-standing interpretation of Section 303(d).

EPA regulations, provide that States do not need to list waters where the following controls are adequate to implement applicable standards: (1) technology-based effluent limitations required by the Act, (2) more stringent effluent limitations required by State or local authority, and (3) other pollution control measures required by State, local, or federal authority. See 40 CFR 130.7(b)(1).

#### Consideration of Existing and Readily Available Water Quality-Related Data and Information.

In developing Section 303(d) lists, States are required to assemble and evaluate all existing and readily available water quality-related data and information, including, at a minimum, consideration of existing and readily available data and information about the following categories of waters: (1) waters identified as partially meeting or not meeting designated uses, or as threatened, in the State's most recent Section 305(b) report; (2) waters for which dilution calculations or predictive modeling indicate nonattainment of applicable standards; (3) waters for which water quality problems have been reported by governmental agencies, members of the public, or academic institutions; and (4) waters identified as impaired or threatened in any Section 319 nonpoint assessment submitted to EPA. See 40 CFR 130.7(b)(5). In addition to these

minimum categories, States are required to consider any other data and information that is existing and readily available. EPA's 1991 Guidance for Water Quality-Based Decisions describes categories of water quality-related data and information that may be existing and readily available. See Guidance for Water Quality-Based Decisions: The TMDL Process, EPA Office of Water, 1991, Appendix C "EPA's 1991 Guidance"). While States are required to evaluate all existing and readily available water quality-related data and information, States may decide to rely or not rely on particular data or information in determining whether to list particular waters.

In addition to requiring States to assemble and evaluate all existing and readily available water quality-related data and information, EPA regulations at 40 CFR 130.7(b)(6) require States to include as part of their submissions to EPA documentation to support decisions to rely or not rely on particular data and information and decisions to list or not list waters. Such documentation needs to include, at a minimum, the following information: (1) a description of the methodology used to develop the list; (2) a description of the data and information used to identify waters; and (3) any other reasonable information requested by the Region.

#### Priority Ranking.

EPA regulations also codify and interpret the requirement in Section 303(d)(1)(A) of the Act that States establish a priority ranking for listed waters. The regulations at 40 CFR 130.7(b)(4) require States to prioritize waters on their Section 303(d) lists for TMDL development, and also to identify those WQLs targeted for TMDL development in the next two years. In prioritizing and targeting waters, States must, at a minimum, take into account the severity of the pollution and the uses to be made of such waters. See Section 303(d)(1)(A). As long as these factors are taken into account, the Act provides that States establish priorities. States may consider other factors relevant to prioritizing waters for TMDL development, including immediate programmatic needs, vulnerability of particular waters as aquatic habitats, recreational, economic, and aesthetic importance of particular waters, degree of public interest and support, and state or national policies and priorities. See 57 FR 33040, 33045 (July 24, 1992), and EPA's 1991 Guidance at 4.

### **Analysis of New Mexico's Submission**

#### Identification of Waters and Consideration of Existing and Readily Available Water Quality-Related Data and Information.

New Mexico's 2000 §303(d) list primarily addresses changes based on intensive data collection efforts by the State in the Cimarron, Jemez, Chama, San Francisco, Red, Santa Fe and middle Rio Grande watersheds. All other listings, with few exceptions, remain unchanged from the 1998 §303(d) list. The primary exception to this is the removal of waters that were listed solely based on violations of the State's 0.1 mg/L criterion for total phosphorous. This criterion

was removed during the most recent triennial standards review. The State's list identifies the pollutants causing or expected to cause violations of applicable water quality standards. In addition, New Mexico's 2000 list provides a "Probable Source of Pollutant" column that lists potential sources of these specific pollutants. This restructuring of the list is new in 2000 and provides valuable information about the probable sources of the specific pollutant of concern. To compile its list, the State of New Mexico has developed and applied an assessment methodology for identifying waters. EPA has reviewed this document entitled, 2000 State of New Mexico Procedures for Assessing Standards Attainment for §303(d) List and §305(b). The New Mexico assessment protocol contains procedures for assessing biological data, stream toxicity data, toxic substances, physical/chemical data, and bacteriological data to make designated use determinations. In addition, EPA has evaluated several other protocol documents prepared by the State of New Mexico that are used to evaluate the State's narrative standards for nutrients and stream bottom deposits.

The State considered all data and information regarding 130.7(b)(5) categories, which is the minimum required by the regulations. The State evaluated data and information about the following categories of waters:

(1) waters identified as partially meeting or not meeting designated uses, or as Full Support, Impacts Observed (FSIO), in the State's most recent Section 305(b) report;

The State of New Mexico relied heavily on its 1998 305(b) report identifying waters not meeting designated uses in designing and implementing monitoring efforts in the basins evaluated during this two year period. In addition to waters not meeting designated uses the State evaluated waters that were included in the 1998 §305(b) report as Full Support, Impacts Observed. The State has indicated its intent to monitor waters identified as FSIO, and such waters would be included on future lists if warranted by the monitoring results. A number of such listings were evaluated during 1998 and 1999 monitoring surveys and have been appropriately designated as Full Support or downgraded to Partial or Not Supporting based on information gathered during this two-year period.

(2) waters for which dilution calculations or predictive modeling indicate non-attainment of applicable standards;

There are no such waters identified by the State of New Mexico. Region 6 is not aware of any additional information or data of this type that could be used in development of the list and no additional information or data was submitted during the public comment periods.

(3) waters for which water quality problems have been reported by governmental agencies, members of the public, or academic institutions;

The State of New Mexico routinely utilizes U. S. Geological Survey (USGS) water

column pollutant data along with its own data collected as part of intensive surveys in conducting its stream assessments and in the development of TMDLs. EPA has reviewed New Mexico's description of the data and information it considered and data submitted to EPA by the State of New Mexico. The description of the 2000 list submittal states that the State has made extensive efforts to identify and utilize all existing and readily available information. Region 6 is not aware of any additional information or data that could be used in development of the list. No specific additional information or data was submitted during the public comment period. One commenter did raise the issue of some potential sources of data that would be readily available. The State has responded to this comment stating how some of this data was considered and why some of the databases were not included in list development. EPA has reviewed the State's response to comments and finds that the State has adequately documented their solicitation and use of other sources of data external to the New Mexico Environment Department.

(4) waters identified as impaired or threatened in any §319 nonpoint assessment submitted to EPA.

For several years the State of New Mexico has incorporated its nonpoint assessment into the §305(b) and §303(d) list process. As a result, the §305(b) reports are inclusive of the §319 assessment reports.

(5) in addition to these minimum categories, States are required to consider any other data and information that is existing and readily available.

This data and information includes fixed station long-term surface water quality network data (189 stations), stage/flow and hydrology (72 stations) data from USGS, fish tissue data, intensive survey data for specific water bodies that include physical, chemical and some biological data, biotoxicity monitoring data. In addition, the State provided its rationale for not relying on particular existing and readily available water quality-related data and information as a basis for listing waters.

EPA has reviewed the State's submission, and has concluded that the State developed its Section 303(d) list in compliance with Section 303(d) of the Act and 40 CFR 130.7. EPA's review is based on its analysis of whether the State reasonably considered existing and readily available water quality-related data and information and reasonably identified waters required to be listed.

### Priority Ranking

The list includes a priority ranking as required under § 130.7(b)(4). The priority ranking also includes identification of waters targeted for TMDL development in the next two years. The New Mexico process for prioritization uses a flowchart that is published in the document "*The*

*Process for Developing Total Maximum Daily Loads for Point Source Wasteload Allocations and Nonpoint Source Load Allocations With the Methodology for Stream Reach Ranking in the State of New Mexico.*” EPA reviewed this document as part of this approval decision. This flow chart includes two overriding factors for both high and low priority waterbodies. These two concerns are acute public health concerns and threatened or endangered aquatic species on the reach. This ranking scheme provides for eight priority classifications. High priority waters, including the designated uses of high quality cold-water fishery, cold-water fishery, and drinking water supply are assigned priorities from one to four based on the absence/presence of toxic substances and NPDES permitted facilities. Designated uses of marginal cold-water fishery, limited warm-water fishery, livestock watering, wildlife habitat, irrigation, secondary contact and primary contact are considered lower priority waters and are assigned a priority of five to eight based on the absence/presence of toxic pollutants and NPDES permitted facilities. If reach assessments/evaluations determine that acute public health concerns, threatened or endangered species or both exist, then the reach immediately goes to a Priority I ranking.

### Public Participation

New Mexico's 2000 303(d) submittal was made available for public comment, consistent with the procedures outlined in the State's Continuing Planning Process (CPP) document, from March 14, 2000 through June 12, 2000. The comment period was initially opened at the March 14, 2000, meeting of the Water Quality Control Commission (WQCC). In addition to announcing the opening of the comment period at this public meeting, a mailing was sent out to all persons and groups on the WQCC mailing list, the Nonpoint Source Workgroup and a New Mexico Environment Department e-mail list of individuals and groups who have shown interest in other water quality issues. At the end of the 30-day review and comment period, requests were made to the WQCC to extend the comment period. The WQCC voted to extend the comment period for an additional 60 days. The State has submitted documentation showing that the list was published in three of the State's major newspapers, The Albuquerque Journal, Santa Fe New Mexican, and Las Cruces Sun News. The list was also made available on the State's New Mexico Environment Department internet web site. Additionally, copies of the list and the New Mexico Record of Decision document were mailed to anyone who requested a copy. Comments concerning the list were received by letter, fax and email. Copies of the public notices, all comment letters and the State's response to comments (“responsiveness summary”) were included in the State's 2000 303(d) list submittal package.

EPA has reviewed the responsiveness summary attached to the State's 2000 303(d) submittal and is satisfied that the State has met all regulatory requirements in responding to comments concerning its 2000 303(d) list.

## Document Index

Memorandum from Geoffrey H. Grubbs, Director, Assessment and Watershed Protection Division to FACA Workgroup on Section 303(d) Listing Criteria re: Nonpoint Sources and Section 303(d) Listing Requirements (May 23, 1997)

Memorandum from Robert Perciasepe, Assistant Administrator to Regional Administrators and Regional Water Division Directors, re: New Policies for establishing and Implementing Total Maximum Daily Loads (August 8, 1997).

Final Rules for Implementing Clean Water Act Section 303(d), Total Maximum Daily Loads (TMDL) and Individual Water Quality-based Effluent Limitations. 40CFR130.7. July 24, 1992.

Memorandum from Robert H. Wayland III, Director, Office of Wetlands, Oceans and Watersheds to Water Division Directors, re: National Clarifying Guidance for 1998 State and Territory Section 303(d) Listing Decisions (August 17, 1997).

Guidance for Water quality-Based Decision: The TMDL Process, April 1991.

State of New Mexico Procedures for Assessing Standards Attainment for §303(d) List and §305(b) Report. New Mexico Environment Department. April 25, 2000.

Nutrient Assessment Protocol for Streams. New Mexico Environment Department. July, 2000.

Protocol for the Assessment of Stream Bottom Deposits. New Mexico Environment Department. July 5, 2000.

The Process for Developing Total Maximum Daily Loads for Point Source Wasteload Allocations and Nonpoint Source Load Allocations With the Methodology for Stream Reach Ranking in the State of New Mexico. New Mexico Environment Department. August 21, 2000.

State of New Mexico 303(d) list for Assessed Streams and River Reaches. New Mexico Environment Department. April, 1998.

State of New Mexico 303(d) list for Assessed Streams and River Reaches. New Mexico Environment Department. August, 2000

State of New Mexico 303(d) list for Assessed Streams and River Reaches. Record of Decision (ROD) for River/Stream Listings. New Mexico Environment Department. August, 2000.

2000-2002 State of New Mexico §303(d) List, Public Comment Submissions, Comment Period March 14, 2000 through June 12, 2000. New Mexico Environment Department. August, 2000.