APPENDIX F
RESPONSES TO COMMENTS

Comment Set A:
Molycorp

(PDF of letter received inserted)

Molycorp, Inc.
Questa Division
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Molycorp

Scott Honan
Supervisor, Environmental Compliance

December 15, 2005

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

RE: Comments on the Draft TMDL for the Red River Watershed

Dear Ms. Ickes:

Molycorp has reviewed the Draft TMDL for the Red River Watershed dated October 31, 2005. In general, this draft represents a substantial improvement over previous efforts, and Molycorp is in agreement with the conclusions reached in the document. Attached to this letter are comments on the draft TMDL that have been prepared by Chadwick Ecological Consultants, Inc. These comments are being provided in the spirit of assisting NMED to produce a stronger and more defensible final TMDL.

Molycorp has additional suggestions that might improve the report, but we are not sure they are of sufficient significance to state them at this time. Please contact myself (505.586.7642) or Mr. Steven Canton of Chadwick (303.794.5530) should you have any questions regarding this submission.

Sincerely,

Scott Honan

Scott Honan

C: Anne Wagner, Molycorp

Chadwick Ecological Consultants, Inc.
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December 15, 2005

TECHNICAL MEMORANDUM

REVIEW OF OCTOBER 31, 2005 RED RIVER TMDL

Chadwick Ecological Consultants, Inc. (CEC) was asked to review 2005 Draft Total Maximum Daily Load (TMDL) for the Red River Watershed document on behalf of Molycorp, concentrating on the acute aluminum (Al) portion of the TMDL document. Before we present our comments, we would like to recognize the considerable effort that the Surface Water Quality Bureau (SWQB) of the New Mexico Environment Department (NMED) spent on this TMDL, which we believe can serve as an excellent starting point for guiding future efforts to improve water quality in the Red River.

Aluminum TMDL-Red River, Bitter Creek, and Placer Creek

Overall, the report presents a reasonable and generally complete picture of the complexities of the Red River Watershed in a straightforward and understandable manner, including discussion of the numerous non-point sources adding acute Al loads to the Red River. There are a few changes that we believe could improve the acute Al TMDL, based on general EPA TMDL practice and our knowledge of the river, including:

- Providing an estimate of the relative contributions of specific non-point sources;
- Providing a discussion on non-anthropogenic or "background" concentrations or conditions for each of the pollutants (which would be useful, given the complexity of the watershed); and
- Using only acute Al sources and loads in the document.

Again, these comments are being submitted to improve and strengthen the final document.

Acute aluminum approach

Because of the decision to propose an acute Al TMDL, rather than a chronic TMDL, it is important that data used in the TMDL analysis only reflect the portions of each river segment that are acutely impaired by Al and describe only the sources that contribute to acute aluminum exceedances.

Response: *The SWQB does not feel it is possible to determine exactly which sources are contributing to only the acute aluminum exceedences and which contribute to only the chronic aluminum exceedences. Since exceedences are determine based on a concentration of aluminum in water grab samples all sources would be contributing to that aluminum concentration.*

Assigning acute aluminum exceedances to entire river

Multiple Al sources and sinks exist within the Red River watershed due to the unique geology and its contribution to ambient water quality characteristics that effect Al transport. The draft TMDL document contains acute Al TMDLs for Red River, Bitter Creek, and Placer Creek: The separation of Bitter Creek and Placer Creek for individual TMDL analyses is appropriate. However, we are concerned that using the entire reach of the Red River from Placer Creek to the Rio Grande results in an inaccurate estimate of acute Al loads at the confluence with the Rio Grande River.

Specifically, multiplying the arithmetic mean of acute Al exceedances in the Red River upstream of the confluence by the mean high flow at the base of the watershed generates an incorrect estimate of the actual measured load for the portions of the Red River that exceed the acute standard since it is a gaining watershed. This is especially true since exceedance locations are all ≥ 24 km upstream of the confluence with the Rio Grande River (See Figure 6.1).[1]

Matched site flow data and dissolved Al concentrations that exceed the acute standard should be used to determine the relative contribution to acute exceedances from different reaches within the Red River. This approach would probably result in sectioning the river into acutely impaired and unimpaired segments, thus identifying different areas of concern throughout the watershed. The toxicity reference value of 0.75 mg dissolved Al/L would remain the same for each segment, yet the target load and measured loads will vary throughout the watershed with flow and instream Al concentrations.

According to Figure 6.1, the Red River is acutely impaired by Al only in the reaches more than approximately 24 river km upstream from the confluence with the Rio Grande River. The remainder of the river is chronically impaired and as such should not be included (via flow or river miles) in the acute TMDL analysis.

Thus, one approach would be to split the river based on portions exceeding acute Al concentrations, while also incorporating the geologic and hydrologic characteristics that reflect acute Al sources and impacts. Such sub-segmentation could include splitting the Placer Creek to the Rio Grande segment into at least two segments, with Columbine Creek being a reasonable hydrologic break. Based on the NMED data,

[1] We should note that Figure 6.1 appears to have mislabeled units. The values in the x-axis appear to be distance in kilometers – based on our knowledge of the river – but the units are reported as miles.

only the potential sub-segment from Placer Creek to Columbine Creek would be listed for acute impairment for Al. Columbine Creek is located approximately 13.4 miles (21.5 km) upstream of the confluence with the Rio Grande River. Al concentrations below Columbine Creek do not contribute to acute exceedences.

Using this alternative approach, the calculation of target loads and measured loads (and, subsequent load reductions necessary to meet the acute Al standard) would change (see Table 1). Given the flows modeled above Columbine Creek of 91.8 cfs or 59.3 mgd (Appendix C of the report, May 1999) and the same mean dissolved Al concentrations of 1.13 mg/L (based on acute exceedances in May 1999), measured loads contributing to acute Al would be 559 lbs/day, rather than the 1,170 lbs/day used in the report. The resulting TMDL would be 371 lbs/day, instead of 776 lbs/day in the report, resulting in a load reduction of 188 lbs/day.

Table 1: An example recalculation of target loads and measured loads for the segment of the Red River with dissolved Al concentrations that exceed the acute criterion of 0.75 mg/L.

Location	Flow[a] (mgd)	Acute Criterion (mg/L)	Target Load Capacity (lbs/day)	Mean dissolved Al[b] (mg/L)	Measured Load (lbs/day)
Placer Creek to Columbine Creek	59.3	0.75	371	1.13	559

[a] flow = model station 10-above of Columbine Creek, from TMDL, Appendix C.
[b] mean of aluminum concentrations exceeding the acute criterion in May 1999.

Response: *The Red River (Rio Grande to Placer Creek) is covered by one assessment unit and one water quality standard segment (20.6.4. NMAC); therefore we feel that one TMDL is appropriate. Splitting this assessment unit will be considered by SWQB staff for future SWQB intensive surveys and TMDLs, but at this time we do not believe it is necessary to split it in this TMDL document.*

Seasonal TMDL

Additionally, it should be more clearly stated the derived acute Al TMDLs are specifically for spring runoff conditions – and, as such, constitute a seasonal TMDL. Such a designation is common, especially with regard to nutrient TMDLs.

Response: *NMED has prepared seasonal TMDLs for other watersheds when the point source contributors have variable flow based on recreation levels. We do not believe it is necessary to designated this TMDL as a seasonal TMDL; therefore this change will not be made.*

Other Suggested Corrections to the Aluminum TMDL Analysis

Waste Load Allocations

Report Table 6.3 states the point source waste load allocations (WLA) were derived from the monthly average discharge limit, whereas the text states these values are the maximum Al loads. Since these values are used in acute TMDL calculations, we believe the loads set to meet daily max limits (based on acute standards), rather than loads set to meet the monthly average limit, would be more appropriate to determine the WLA for this TMDL. Loads set to meet chronic standards would not be expected to contribute to an acute Al exceedance.

Response: It is SWQB's standard practice to use monthly average values in TMDLs and not daily maximum levels. The reference in the text has been modified to clarify this point.

Incorporation of the Margin of Safety

The footnote to Table 6.5 notes "the MOS is not included in the load reduction calculation because it is a set aside value which accounts for any uncertainty or variability in TMDL calculation and therefore should not be subtracted from the measured load." Although data presented in the report were for informational purposes only, it appears that the statement in the footnote was not followed. Specifically, load reduction was calculated in the document as:

Load Reduction = Measured Load-Target Load

Where: **Target Load = WLA + LA.**

However, this is actually: **Target Load = WLA + [TMDL - (WLA+MOS)]** (since no measurements were available for the load allocation [LA]).

Therefore, the load reduction equation would be:

Load Reduction = Measured Load –TMDL + MOS

As such, it appears the MOS was considered in the determination of load reduction, as it was included in the target load. However, if the MOS were not included, the actual percentage load reduction necessary to meet the proposed TMDLs would be much less for each location than the percentages presented in the report (Table 2). If this was not the report's intent, this footnote and percentages in the table should be modified accordingly.

Table 2: Calculated percent reductions when removing the MOS from load reduction calculations.

Location	Al TMDL	Measured Al Load	Al Load Reduction	% Reduction
Red River (Rio Grande to Placer Creek	776	1,170	394	33.7%
Bitter Creek (Red River to Headwaters)	41.9	71	29.1	41.0%
Placer Creek (Red River to Headwaters)	10.0	14.4	4.4	30.5%

[a] Load Reduction = Measured Load - TMDL

Response: *We feel you have misinterpreted the footnote for Table 6.5. It is included only to clarify why the MOS is not being subtracted from the Measured Load to determine the load reduction needed to meet the TMDL. The Target Load is equal to the WLA + LA, which is a different value from the TMDL.*

Summary of Sources

Report Table 6.6 presents the pollutant source summary for dissolved Al. Potential sources are broken into point and non point sources. We believe a distinction should be made as to whether a source is contributing to acute Al exceedances or not, since this is an acute Al TMDL. It doesn't appear that this distinction is made.

The LA was derived from the calculated TMDL, MOS and WLA. These values actually represent the *target load* for this segment, not the "measured load" contributed by non-point sources as described by the text and Footnote (a) to Table 6.6. Although the TMDL document states that the exact amount of these values are still to be determined, the magnitude of non-point source contributions to the Red River, using the TMDL values, should be 1,166 lbs/day (= measured load – WLA), to be consistent with the other segments presented. Percent contributions of the potential sources to the Red River are correct and were likely based on this value.

Response: *It is not possible to designate pollutant sources to just the acute or chronic aluminum impairments since all sources contribute to the aluminum concentration in the Red River. The magnitude of the nonpoint source contributions was wrong and has been corrected to reflect the measured load.*

Flow conversion from cfs to mgd

The equation presented results in a measurement that's actually 10-times the reported value. We think the last conversion factor should be 10^{-7}, not 10^{-6}.

Response: We believe the conversion factor of 10^{-6} in the following equation is correct to convert from gallons per day to million gallons per day.

$$192\,\frac{ft^3}{\sec} \times 7.48\,\frac{gal}{ft^3} \times 86{,}400\,\frac{\sec}{day} \times 10^{-6} = 124 mgd$$

Link between water quality and pollutant sources: Relationship between dissolved Al and TSS in the Red River

It was stated in the TMDL: that only a very weak relationship between dissolved Al and TSS exists for Red River and Bitter Creek (R^2 = 0.10 and 0.064 respectively) and that a stronger relationship exists for Placer Creek (R^2=0.57). This difference could be due to the differential range of TSS values. Placer Creek TSS data used for this analysis range from approximately 0-9 mg/L. Red River and Bitter Creek TSS data range from 0 to >500 and 300 mg/L respectively. Looking strictly at the low TSS concentrations (perhaps < 75 mg/L TSS), it seems that a relationship between TSS and dissolved Al may also exist for these sites. [Note: All of the above statements were generated from a visual analysis of the data. No raw data were used to draw these conclusions.]

Sediment/Siltation TMDL - Bitter Creek

Because no data were available, target loads were determined from relationships between percent fines and biological scores of the study site and a reference site (Columbine Creek). According to the satellite image provided, minimal or no alteration scars exist within the Columbine Creek watershed. This raises the question of whether Columbine Creek is an appropriate reference site given the differences in geology between the sites. Likely, background load between these two sites differ, which would generate different expected conditions.

The percent reduction necessary to meet the derived sediment TMDL is 81%. The report suggests that the majority of the Bitter Creek sediment load originates from the highly erodible alteration scars. The NMED SWQB 1999 sampling (NMED 2004) indicated that sand and gravel operations and development have led to the very high sediment loads in Bitter Creek. It would be helpful if these seemingly contradictory statements could be reconciled and a percentage approximation made between the contributions of natural and man-made sources.

Response: *Reference sites are picked based on the best available sites for a watershed. Columbine Creek was considered by field staff to be the best available site in this watershed based on the lack of other relatively non-impaired streams in this watershed.*

These two statements are not contradictory. In the NMED SWQB 1999 survey report was discussing potential nonpoint source contributions to the impairment and the TMDL is also including potential background sources. The sand and gravel operation and development are definitely contributing to the impairments in Bitter Creek.

Comment Set B:

Amigos Bravos

Friends of the Wild Rivers
P.O.Box 238, Taos, NM 87571
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December 16th, 2005

Sent Via and Electronic Mail

Jennifer A. Ickes
TMDL and Outreach Team
Surface Water Quality Bureau
NM Environment Department
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RE: Red River TMDL

Dear Ms. Ickes:

Introduction

As a statewide river conservation organization based in Taos, Amigos Bravos, Friends of the Wild Rivers, would like to submit the following comments on the draft TMDL document for the Red River. In New Mexico, issues of water quality and quantity are integral to all aspects of life. The cultural and ecological survival of the communities of New Mexico is intricately tied to our rivers, acequias and other water bodies and we strongly support efforts to curb pollution to our waters through strong TMDL documents with enforceable implementation plants. We have organized our comments into a number of general topic areas:

Implementation Plan

Where are the guarantees that this TMDL document is not merely a paper exercise? Amigos Bravos holds that TMDLS, including their implementation plans, should be written as enforceable documents. On page 57 the TMDL states "Implementation of BMPs within the watershed to reduce pollutant loading from NPS will be encouraged." How will the Environment Department encourage BMPs? The implementation plan should include detailed plans as to what types of BMPs will be encouraged, and ideally required, to meet water quality standards.

TMDLs, should be written with equal focus on presenting data on current conditions *and* implementing plans to clean up the river. Most TMDL documents are heavy on data on the current conditions and the target conditions but lack detail on how to get to that target. Two pages out of sixty-four is not giving TMDL implementation adequate attention.

Response: *The NMED nonpoint source water quality management program has historically strived for and will continue to promote voluntary compliance to nonpoint source water pollution concerns by utilizing a voluntary, cooperative approach. In addition, other compliance remedies are outlined in Section 9.0, page 59, of this TMDL document. NMED does not include detailed implementation plans in our TMDL documents because we contend that Watershed Restoration Action Strategies (WRAS) written on a local level by stakeholder groups in cooperation with the SWQB are in essence TMDL implementation plans. SWQB provides Clean Water Act Section 319 funding to watershed groups for WRAS development. Also, EPA does not review implementation plans included in TMDL documents because they are not a required element. We contend it is confusing to the public, staff, and EPA to have one document that is only partially EPA-approved, so we believe the TMDL implementation portion is more clearly presented in the WRAS format.*

Potential versus Actual Sources of Pollution

The one area that the TMDL can make a strong statement is in identifying sources of pollution. Amigos Bravos believes that there is definitive proof that many of the sources labeled "potential" sources of pollution in all of New Mexico's TMDL documents, including the Red River TMDL are actual sources of pollution and should be labeled as such. The impacts from recreation, highway and road runoff and impacts from mining activities in the Red River should all be labeled as "sources of pollution" rather than "potential sources."

Response: *Intensive surveys completed by the SWQB are not designed to determine the exact sources of pollution in each waterbody and therefore we do not feel it would be appropriate to label these sources as definitely contributors to the pollution problems. We are continually improving our monitoring and assessment methods and working towards intensive studies that will better target sources of pollution.*

Recreation – Potential Source of Pollution

Recreation should be added as a source of pollution for turbidity on Pioneer Creek (page 37) and for Aluminum on Placer Creek (page 49). Amigos Bravos has been working on a project to address pollution from OHV abuse in the upper Red River and during this project we have inventoried impacts to water quality from OHV abuse in almost all of the tributaries to the Red River including Pioneer and Placer Creeks. The Questa Ranger District of the US Forest Service has a detailed map with GPS points of the most impacted places from OHV abuse in the watershed – many of these places can be found on Placer and Pioneer Creeks.

Response: *Agreed. "Off-road vehicles" has been added as potential source of pollution for both Pioneer Creek and Placer Creek.*

Mining Activities

Current mining activities should be listed as a current source of pollution in the Red River (Rio Grande to Placer Creek). There is some indication that seeps from the Molycorp mine site are still contributing to Aluminum levels in the Red River – this would be an illegal waste load

allocation. Runoff from the mine site is definitely contributing to the load allocation for sediment and aluminum and should be listed as a source on page 49.

Response: *Agreed. Current mining activities has been added as a potential source of pollution in the Red River.*

Red River (Rio Grande to Placer Creek) – impaired for sediment and water bioassays
On page 21 the TMDL states that the Red River from the Rio Grande to Placer Creek is impaired for sediment and water bioassays yet a TMDL has not been prepared for these constituents for this part of the watershed.

Response: *It is not possible to prepare TMDLs for Sediment and Water Bioassay listings because the actual constituent(s) causing the toxicity is not identified by these listings. EPA encourages states to document impairment based on the results of toxicity testing (see our Assessment Protocols for the listing process at: http://www.nmenv.state.nm.us/swqb/protocols/index.html). States then need to identify the actual parameter(s) of concern in order to develop TMDLs. In this portion of the Red River, it is reasonable to assume that elevated aluminum is the cause of toxicity.*

Chronic Aluminum
Since this TMDL was written for Acute Aluminum with no regard for chronic standards the TMDL for Aluminum is somewhat meaningless. TMDLs must be written to protect the most sensitive use in the water resource for aluminum, which would be coldwater aquatic life. To protect coldwater aquatic life, chronic standards as well as acute standards must be met. This TMDL only addresses acute standards for aluminum and thus gives an inadequate picture of the watershed and is ultimately a waste of time and resources.

Response: *The NMED understands that this TMDL may not be protective of the coldwater aquatic life use since it does not address the chronic aluminum impairments. We are working to rectify this by proposing more appropriate chronic aluminum standards for the Red River Watershed and develop any required chronic aluminum TMDLs.*

Waste Load Allocation
Since the only way that TMDLs have any true weight, in terms of enforcement, to protect the watershed is by assigning and enforcing proper waste load allocations, Amigos Bravos thinks that it would be appropriate to prohibit any waste load allocation in the impaired segment for any impaired constituents until target loads are met. This would be a first step in protecting the many impaired watersheds in the state. This may force watershed residents and industries to address the load allocation sources more effectively. This is especially appropriate since the point source dischargers are often closely connected to the land-use activities in the watershed that are causing the non-point source pollution.

Response: *While NMED understands your point, we cannot prohibit WLAs in the TMDLs. WLAs are a required element.*

Stormwater Impacts

The TMDL does not account for the potentially substantial impacts from stormwater running off of construction and industrial sites. Storm Water Pollution Prevention Plans (SWPPPs) developed under the General Storm Water Permits and referred to in the TMDL are *not*, as suggested by the TMDL, adequate for controlling all pollution from construction sites. The TMDL itself states that the Storm Water Pollution Prevention Plans (SWPPPs) developed under the General Storm Water Permits (CGP and MSGP) "minimize" impacts to water quality. Coverage under the CGP and MSGP and the related SWPPPs do not *eliminate* impacts to water quality. Therefore, the TMDL should allocate at least some waste load allocation to pollution from stormwater running off construction sites that are covered under the General Construction Storm Water Permit, and some load allocation to construction sites not covered under the general permit. The same should hold true for industrial sites. The TMDL also states "compliance with a SWPPP that meets the requirements of the MSGP is generally assumed to be consistent with this TMDL" (page 35). Does the Environment Department inspect these construction and industrial sites to make sure that there is a SWPPP and that it is indeed being complied to? How is the public to know if stormwater runoff from these sites is, in fact, being controlled? At the very least the TMDL should identify sites and facilities that are covered under these general stormwater permits in the watershed.

Response: *Since these various permits require BMPs in order decrease or eliminate any discharge from the sites, we do not believe it is appropriate to assign a waste load allocation or load allocation to these permits. The SWQB has considered adding information on construction permits to the TMDLs, but these sites are generally very transient and change dramatically from the time of the study to the time when the TMDLs are prepared. General permits do not have the information necessary to determine potential loading in TMDLs. In future TMDLs we will add a list of stormwater permits that are active when intensive surveys are completed and the TMDLs are prepared.*

Previous Comments

Amigos Bravos commented on the first draft of TMDLs for the Red River back in 2002. We have attached our comments (only available in hard copy by fax) from that comment period and hope that these concerns will be addressed as well.

Response: *We have reviewed this comment set as well with respect to the revised draft. We believe the concerns have been addressed in the revised TMDL.*

Thank you for the opportunity to comment on the draft TMDL. We look forward to your response to our comments.

Thank you and happy holidays,

Rachel Conn
Clean Water Circuit Rider
Amigos Bravos

Comment Set C:
Taos County Soil and Water Conservation District

December 29, 2005

New Mexico Environment Department
SWQB, Room N2109
P.O. Box 26110,
Santa Fe, NM 87502

Attn: Ms. Jennifer Ickes

Subject: Comments on Draft (TMDL), RED RIVER WATERSHED

Dear Ms Ickes;

The following comments are submitted on behalf of the Taos County Soil and Water Conservation District. The Comments refer to the version of the Draft TMDL for the Red River Watershed that was available on the New Mexico Environment Department, Surface Water Quality Bureau's web site on December 16, 2005. The general concern of the District is that watersheds or stream segments be listed based on best scientific data and that impairment decisions and eventual TMDL implementation actions be based on clear links between data and causes of impairments. This relates to the specific concern that any proposed TMDL implementation actions that affect District actions or policies be in the overall best interest of the health of the target watershed.

The Red River (from its confluence with the Rio Grande), together with its tributaries and headwaters (upstream from the confluence of the main and west forks of the Red River), define the Red River Watershed of northern New Mexico. In general, it seems that development of a TMDL strategy for this watershed is premature at this time. Some impairments are not addressed due to consideration of pending changes in water quality criteria, other portions of loads are not assessed since the resources and data are not available at this time, and the USGS has ongoing studies of this watershed that are not available for review by the general public.

The review and comments submitted herein are preliminary based on the lack of time to review all of the information supporting the proposed actions, especially the USGS studies of the Red River watershed. The review has identified several areas of concern:

- For example the determination that Pioneer Creek is impaired for turbidity is based on only 11 measurements, only two of which exceed the New Mexico turbidity criteria;

- Less than 20% of the measurements exceed the turbidity standard of 50 NTU, and the two measurements that exceed the standard occurred in a spring and may represent "background" conditions for spring runoff;

Response: *According to the SWQB's Assessment Protocols, an assessment unit is considered impaired if greater than 15% of the measurements exceed the turbidity criterion.*

- Flow rates tributaries are estimated from Red River flow based on a watershed model. This may be an acceptable method, but the MOS and uncertainty factors in all calculations should be increased to address this added source of potential error and uncertainty;

Response: *The MOS was increased by 10% to account for an uncertainty in this flow model.*

- The relationship between the discussion of the development of a TMDL for aluminum in the Executive summary and the discussion in Chapter 6 is confusing. Is it the intent to develop a TMDL for aluminum in this document or wait for a revised chronic criterion? ;

Response: *The acute TMDLs were prepared in this document and chronic TMDLs will be prepared if necessary after an appropriate revised chronic criterion is adopted..*

- The assessment is almost totally dependent upon the judgment of NMED staff, since no clear statistical criteria for determining what percentage of samples that exceed a standard indicate impairment or what volume and frequency of data collection data is adequate to determine an impairment: and,

Response: *Data assessments performed by NMED staff on done using our documented Assessment Protocol which are available on our website at: http://www.nmenv.state.nm.us/swqb/protocols/index.html and have been reviewed by the USEPA in Region 6.*

- It is unclear how impairments based on bio-assessment or other means are to be related to be specific to a specific impairing condition, such as elevated turbidity.

Response: *In this TMDL document bioassessments where used only in relation to the stream bottom deposit impairments; not for turbidity or aluminum impairments. The SWQB is in the process of developing biocriteria assessment protocols, but those protocols are not in place at this time.*

Thank you for your consideration of these comments.

Sincerely,

Peter A. Vigil
Taos SWCD – District Manager