
9.0 ASSURANCES

New Mexico's Water Quality Act (Act) authorizes the WQCC to "promulgate and publish regulation to prevent or abate water pollution in the state" and to require permits. The Act authorizes a constituent agency to take enforcement action against any person who violates a water quality standard. (§74-6-10(A) NMSA 1978) Several statutory provisions on nuisance law could also be applied to nonpoint source water pollution. The Water Quality Act also states in §74-6-12(A):

The Water Quality Act (this article) does not grant to the commission or to any other entity the power to take away or modify the property rights in water, nor is it the intention of the Water Quality Act to take away or modify such rights.

In addition, the State of New Mexico Surface Water Quality Standards (see Subsection C of 20.6.4.62) (NMAC 2006) state:

Pursuant to Subsection A of Section 74-6-12 NMSA 1978, this part does not grant to the water quality control commission or to any other entity the power to take away or modify property rights in water.

New Mexico policies are in accordance with the federal Clean Water Act §101(g):

It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this Act. It is the further policy of Congress that nothing in this Act shall be construed to supersede or abrogate rights to quantities of water which have been established by any State. Federal agencies shall co-operate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.

New Mexico's 319 Program has been developed in a coordinated manner with the State's 303(d) process. All 319 watersheds that are targeted in the annual RFP process coincide with the State's biennial impaired waters list as approved by USEPA. The State has given a high priority for funding, assessment, and restoration activities to these watersheds.

As a constituent agency, NMED has the authority under Chapter 74, Article 6-10 NMSA 1978 to issue a compliance order or commence civil action in district court for appropriate relief if NMED determines that actions of a "person" (as defined in the Act) have resulted in a violation of a water quality standard including a violation caused by a nonpoint source. Proving causation by a nonpoint source of a violation of a water quality standard would be very difficult, and to date NMED has not brought an enforcement action on this basis. Instead, 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. NMED believes this is the best and most effective approach to addressing impairment of streams as a result of nonpoint source issues. The State provides technical support and grant monies for implementation of BMPs and other nonpoint source

prevention mechanisms through §319 of the Clean Water Act. Since portions of this TMDL will be implemented through nonpoint source control mechanisms, the New Mexico Watershed Protection Program will target its efforts towards this and other watersheds with TMDLs.

In order to obtain reasonable assurances for implementation in watersheds with multiple landowners, including federal, State and private land, NMED has previously established Memoranda of Understanding (MOUs) with various federal agencies, in particular the USFS and the Bureau of Land Management. MOUs in the past have also been developed with other State agencies, such as the New Mexico State Highway and Transportation Department. These MOUs provide for coordination and consistency in dealing with nonpoint source issues.

The time required to attain standards for all reaches is estimated to be approximately 10-20 years. This estimate includes watershed projects that may not be starting immediately, and also contemplates response to earlier projects. This timeframe is intended to provide some measure of watershed response to projects but is not intended to be a fixed goal. Stakeholders in this process will include SWQB, and other stakeholders involved with the development and implementation of the WRAS. The cooperation of watershed stakeholders will be pivotal in the implementation of these TMDLs as well.