
8.0 ASSURANCES

New Mexico's Water Quality Act authorizes the Water Quality Control Commission (WQCC) to "promulgate and publish regulation to prevent or abate water pollution in the state" and to require permits. The Act also authorizes a constituent agency to take enforcement action against any person who violates a water quality standard. Several statutory provisions on nuisance law could also be applied to nonpoint sourcewater pollution. In addition, the Act 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.

Furthermore, the State of New Mexico Surface WQS (see NMAC 20.6.4.11.C) (NMAC 2002) states:

These water quality standards do not grant the Commission or any other entity the power to create, take away or modify property rights in water.

New Mexico policies are in accordance with the federal CWA §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of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this Act.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. The NMED nonpoint sourcewater quality management program has historically strived for and will continue to promote voluntary compliance to nonpoint sourcewater pollution concerns by utilizing a voluntary, cooperative approach. The State provides technical support and grant monies for implementation of BMPs and other nonpoint sourceprevention mechanisms through §319 of the CWA. Since portions of this TMDL will be implemented through nonpoint sourcecontrol

mechanisms, the New Mexico Watershed Protection Program will target efforts to this and other watersheds with TMDLs. The Jemez Watershed Group applied for and was awarded 319 grant to begin development of projects to address impairments noted in this TMDL document.

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 Forest Service and the BLM. 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 is based on a five-year time frame for implementing various watershed projects that may not be starting immediately or may be in response to earlier projects. Stakeholders in this process will include the SWQB and other members of the WRAS. The cooperation of watershed stakeholders will also be pivotal in the implementation of these TMDLs.