UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
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DALLAS, TX 75202-2733

JUN 29 1998

Mr. Mark Weidler, Secretary
New Mexico Environment Department
P.O. Box 26110
Santa Fe, NM 87502

RE: Final 1998 § 303(d) List

Dear Mr. Weidler:

The U.S. Environmental Protection Agency (EPA), Region 6 has received April 22, 1998, correspondence from the State of New Mexico transmitting the final 1998 § 303(d) list for its approval. EPA has conducted a complete review of the 1998 § 303(d) list and supporting documentation and information. Based on this review, EPA has determined that New Mexico's 1998 list of water quality limited segments (WQLSs) still requiring total maximum daily loads (TMDLs) meets the requirements of § 303(d) of the Clean Water Act (CWA) and EPA's implementing regulations (see enclosed decision document). Therefore, by this order, EPA hereby approves New Mexico's 1998 § 303(d) list.

If you have any questions, please contact me or Troy Hill of my staff at 214/665-6647.

Sincerely yours,

W.B. Hathaway

William B. Hathaway
Director
Water Quality Protection Division

Enclosure

cc: Ed Kelly, NMED
Jim Davis, NMED
David Hogge, NMED

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DECISION DOCUMENT FOR THE APPROVAL/DISAPPROVAL OF NEW MEXICO'S 1998 § 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.

I. Statutory and Regulatory Background

Identification of Water Quality Limited Segments (WQLSs) for Inclusion on § 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 § 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 § 303(d) listing requirement applies to waters impaired by point and/or nonpoint sources, pursuant to EPA's long-standing interpretation of § 303(d).

EPA regulations provide that States do not need to list waters where the following controls are adequate to implement applicable water quality standards: (1) technology-based effluent limitations required by the Act, (2) more stringent effluent limitations required by State or local authority, or federal authority, and (3) other pollution control requirements 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 § 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 § 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 § 319 nonpoint source assessment submitted to EPA. See 40 CFR § 130.7(b)(5). In addition to these minimum categories, States are required to consider any other water quality-related 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 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; (3) a rationale for any decision to not use any existing and readily available data and information, and (4) any other reasonable information requested by the Region.

Priority Ranking

EPA regulations also codify and interpret the requirement in § 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 § 303(d) lists for TMDL development, and also to identify those WQLSs targeted for TMDL development in the next two years. In prioritizing and targeting waters, States must, at minimum, take into account the severity of the pollution and the uses to be made of such waters. See § 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.

II. Analysis of New Mexico's Submission

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

EPA has reviewed the State's description of the data and information it considered, and its methodology for identifying waters and has concluded that the State developed its § 303(d) list in compliance with § 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.

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

New Mexico's § 303(d) listing package includes a document titled "State of New Mexico Procedure for Assessing Standards Attainment for § 303(d) List and § 305(b) Report." This report lists the following sources of data and information that were considered:

Monitored Assessment

NMED Surface Water Quality Bureau water quality/habitat, properly functioning condition monitoring data using approved, quantitative methodologies;

Chemical/physical data from recent studies by NMED or other groups which meet established QA/QC requirements;

USGS water quality data;

Benthic macroinvertebrate data collected by NMED or other agencies/contractor, which meets established QA/QC requirements;

GAWS (General Aquatic Wildlife Survey), RBP (Rapid Bioassessment Protocals), T-Walk (Thalweg-Watershed Area Link) or other biological/habitat data collected by NMED and other groups;

NPDES Discharge Monitoring Report (DMR) data and NMED point source monitoring data, if there is a point source discharge on the stream segment to be assessed;

Results of quantitative field assessments performed by qualified and trained observers;

Citizen or volunteer monitoring data, if from a program with a state approved QA/QC plan.

Evaluated Assessments

A documented non-compliance of narrative surface water standards. Documentation may include photographs, video, and results of qualitative assessments which can be definitively linked to a standard violation;

Monitoring data which is greater than five but less than ten years old;

New Mexico did not rely on a § 305(b) report because an updated report is not available (New Mexico did not submit a 1996 or 1998 § 305(b) report to EPA.) The proposed § 303 (d) list is not completely consistent with New Mexico's most recent § 319 assessment which is included in their 1994 § 305(b) report. EPA understands that in developing its 1998 list, the State conducted a more thorough review of existing water quality data and information than it did for the 1994 § 319 assessment.. This existing data and information includes data and information available during the 1994 § 305(b) cycle and new data and information available for the 1998 listing cycle. In reviewing this data and information in developing the 1998 list, the State determined that some water bodies on the 1994 § 319 assessment were in fact "full support" or "full support /impacts observed." For previously-listed (§ 303(d)) waters where the State determined that data and information existing in 1994 in fact supported a determination that the water was meeting applicable standards, the State requested from the public any data or information indicating that standards were not being met. No such data or information were received in response to the State's request. The "Record of Decision for River/Stream Listings" describes the data and information utilized in this determination for each water body.

There is no indication that any existing and readily available water quality-related data and information (consistent with the "Monitored and Evaluated Assessments") was not evaluated by the State in identifying the § 303(d) list. Consistent with their "Monitored and Evaluated Assessments," NMED did not use monitoring data more than 10 years old, or data that falls below QA/QC requirements. EPA concludes that the State properly assembled and evaluated all

existing and readily available water quality-related data and information, including data and information relating to the categories of waters specified in 40 CFR § 130.7(b)(5).

2. Identification of Waters

New Mexico's § 303(d) listing package indicates that the State develops an initial list of § 303(d) list candidates from the 1996 § 303(d) list and use support determinations based on an evaluation of all existing and readily available water quality related data and information. Based on this evaluation waters with designated use support ratings of non-support, partial support, and support threatened are § 303(d) list candidates. Candidates for the list are then eliminated if one of the following reasons apply:

a. Water quality data and information indicates water bodies are "full support" or "full support/impacts observed" (water bodies which have shown some exceedences of standards but for which there is insufficient data to support listing these water bodies on the § 303(d) list.)

b. if the support threatened waters are not expected to violate applicable water quality standards within two years;

c. if a TMDL has been approved by EPA or a management strategy that constitutes an "other pollution control requirement" under 40 CFR § 130.7 is in place.

a. The State's decision not to include the following waters on its 1998 § 303(d) list is consistent with EPA regulations at 40 CFR § 130.7(b)(1). These waters were identified on the State's 1996 § 303(d) list. EPA understands that in developing its 1998 list, the State conducted a more thorough review of existing water quality data and information. This existing data and information includes data and information available during the 1996 listing cycle and new data and information available for the 1998 listing cycle. In reviewing this data and information in developing the 1998 list, the State determined that the following water bodies were in fact "full support" or "full.support/impacts observed." For previously-listed waters where the State determined that data and information existing in 1996 in fact supported a determination that the water was meeting applicable standards, the State requested from the public any data or information indicating that standards were not being met. No such data or information were received in response to the State's request. The "Record of Decision for River/Stream Listings" describes the data and information utilized in this determination for each water body.

1. Tijeras Arroyo from the mouth of Tijeras Canyon to Tijeras (Rio Grande, unclassified)

2. Hanover Creek from the headwaters to Highway 152 Bridge (ephemeral)

3. Rio Hondo from mouth on Rio Grande to Lake Fork (WBS URG1-20300, WQS 2120)

Two reaches were combined from the 1996-1998 list and removed from the 1998-2000 list:

Rio Hondo from the mouth on the Rio Grande to the South Fork of the Rio Hondo (Rio Grande, 2120), M

Rio Hondo from the South Fork of the Rio Hondo up tp to Lake Fork Creek (Rio Grande, 2120), M

4. Rio Grande from USGS gage at San Marcial to the Rio Puerco (WBS MRG3-10000, WQS 2105)

5. Rio Grande from the Rio Puerco to the southern border of Isleta Pueblo (WBS MRG3-20000, WQS 2105)

6. Rio Puerco from the mouth on the Rio Grande to Rito Olguin (WBS MRG4-10000, WQS 2105)

7. Redondo Creek from the mouth on Sulphur Creek to the headwaters (WBS MRG2-40100, WQS 2106)

8. Porvenir Creek from the mouth on the Gallinas River to the USFS Campground (WBS UPR1-10310, WQS 2212)

9. Pecos River from Salt Creek to Sumner Dam (WBS PR3-10000, WQS 2207)

10. Pecos River from Rio Peñasco to Salt Creek (WBS PR7-10000, WQS 2206)

11. Middle Fork of the Gila River from the mouth on the West Fork of the Gila River to the USFS Ranger Station (WBS GRB1-30200, WQS 2503)

12. West Fork of the Gila River from the confluence with the East Fork of the Gila River to above the Gila Cliff Dwellings (WBS GRB1-30000, WQS 2503)

13. Gilita Creek from the confluence with Snow Canyon Creek to Willow Creek (WBS GRB1-30260, WQS 2503)

14. Willow Creek from the mouth on Gilita Creek to the headwaters (WBS GRB1-30261, WQS 2503)

15. Turkey Creek from the mouth on the Gila River to the headwaters (WBS GRB1-10200, WQS 2503)

16. Iron Creek from the mouth on the Middle Fork of the Gila River to the headwaters (WBS GRB1-30250, WQS 2503)

17. Diamond Creek from the mouth on the East Fork of the Gila River to the headwaters (GRB1-20200, WQS 2503)

18. San Francisco River from the AZ-NM Border to Whitewater Creek (WBS SFR4-10000, WQS 2601)

Two reaches were combined from the 1996-1998 list and removed from the 1998-2000 list:

San Francisco River from Dry Creek to Whitewater Creek (San Francisco River, 2601), M

San Francisco River from the New Mexico/Arizona border to Whitewater Creek (San Francisco River, 2601), M

19. San Francisco River from Whitewater Creek to Largo Canyon (WBS SFR4-20000, WQS 2601)

20. Mineral Creek from the mouth on the San Francisco River to the headwaters (WBS SFR4-20200, WQS 2603)

21. Trout Creek from the mouth on the San Francisco River to the headwaters (WBS SFR4-30400, WQS 2603)

22. Mule Creek from the mouth on the San Francisco River to Mule Springs (WBS SFR4-10100, WQS 2603)

23. Canadian River from the New Mexico-Texas border to Ute Dam (Canadian River, 2301, WBS CR6-10000)

24. Hunter Creek from inflow to Throttle Reservoir to the headwaters (Canadian River, 2305, 1991WBS CR1-10330)

25. Conchas River from inflow to Conchas Reservoir to the headwaters (Canadian River, 2305, WBS CR5-10000)

26. Revuelto Creek from its mouth on the Canadian River (Canadian River, 2301, WBS CR8-10000)

27. Canadian River from inflow to Ute Reservoir to Conchas Dam (Canadian River, 2303, WBS CR6-20000)

28. Manuelitas Creek from the mouth on Sapello River to the headwaters (Canadian River, 2306, WBS CR4-20210)

29. Sapello River from Manuelitas Creek to the headwaters (Canadian River, 2306, WBS CR4-20200)

30. Canadian River from the Mora River to the Cimarron River (Canadian River, 2305, WBS CR3-20000)

31. Canadian River from the inflow to the Conchas River to the Mora River (Canadian River, 2305, WBS CR3-10000)

32. Six-Mile Creek from the inflow to Eagle Nest Lake to the headwaters (Canadian River, 2306, WBS CR2-40000)

33. Una de Gato Creek from the mouth on Chicorica Creek to Throttle Dam (Canadian River, 2305, WBS CR1-10320)

34. Vermejo River from the mouth on the Canadian River to Rail Canyon (Canadian River, 2305, WBS CR1-10100)

35. Canadian River from Cimarron River to the New Mexico-Colorado border (Canadian River, 2305, WBS CR1-10000)

36. San Juan River from the New Mexico-Colorado border to the Chaco River (WQS 2401, WBS SJR5-10000)

37. Nabor Creek from mouth of Rio Chamita to Nabor Reservoir (WQS 2116, WBS URG2-30510)

b. The waters listed below were included on New Mexico's 1996 Section 303(d) list, but were not included on the 1998 list based on the State's revision of its criteria for identifying waters not expected to meet applicable standards. The State's decision not to include the following water bodies listed as threatened on New Mexico's 1996 § 303(d) list is consistent with EPA's 1998 listing guidance. See Memorandum from Robert H. Wayland, "National Clarifying Guidance for 1998 State and Territory Section 303(d) Listing Decisions," August 27, 1997, at 5. The 1998 listing guidance states that, in listing waters not expected to meet applicable standards, States should use the definition of "threatened" waters found in EPA's 1996 Section 305(b) report guidelines.[1] The Section 305(b) guidelines state that the "threatened waters" category should include "waters for which actual monitoring or evaluative data indicate an apparent declining water quality trend." In 1996, New Mexico listed waters on its § 303(d) list as threatened for which data indicated a possible problem but for which there was insufficient information to make a definitive call on partially or not meeting designated uses. It was reasonable for New Mexico to revise its criteria for listing threatened waters in 1998 based on EPA's guidance for the 1998 listing cycle. New Mexico found that the water bodies listed as threatened on the 1996 § 303(d) did not meet the criteria in EPA's 1998 listing guidance; therefore, no "threatened" waters were included on New Mexico's 1998 § 303(d) list. The following water bodies listed on New Mexico's 1996 § 303(d) as threatened are not included on the State's 1998 § 303(d) list (found to be "Full Support/Impacts Observed"):

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[1] Guidelines for Preparation of the 1996 State Water Quality Assessments ((305(b) Reports), EPA Office of Water, May 1995. The Section 305(b) guidelines were revised in September, 1997, but the definition of threatened waters was not revised. See "Guidelines for Preparation of the Comprehensive State Water Quality Assessments (305(b) Reports) and Electronic Updates: Supplement," September 1997, at 1-4.

1. La Jara Creek, perennial portions (Rio Grande, 2107) (threatened notation missing)

2. Rito de los Pinos, perennial portions (Rio Grande, 2107) (threatened notation missing)

3. Costilla Creek from irrigation diversion above Costilla to Comanche Creek (Rio Grande 2120)

4. Comanche Creek from Little Costilla Creek to headwaters (Rio Grande 2120)

5. Columbine Creek at its mouth on the Red River (Rio Grande 2119)

6. Mallete Creek from the mouth on Red River to headwaters (Rio Grande 2120)

7. Red River from Placer Creek to the confluence of East and West Forks of Red River (Rio Grande 2119)

8. West Fork of the Red River from the confluence with the East Fork to headwaters (Rio Grande 2120)

9. Middle Fork of the Red River from the mouth on the West Fork to the headwaters (Rio Grande 2120)

10. Rio Santa Barbara from the Village of Rodarte to the confluence of the East and West Forks (Rio Grande 2120)

11. Placer Creek from the mouth on Rio Vallecitos to Hopewell Lake (Rio Grande 2112)

12. Placer Creek from the inflow to Hopewell Lake to headwaters (Rio Grande 2112)

13. Pecos River from Jacks Creek to the headwaters (Pecos River 2214)

14. Indian Creek from the mouth on the Pecos River to the headwaters (Pecos River 2214)

15. Macho Canyon Creek from the mouth on the Pecos River to the headwaters (Pecos River 2214)

16. Dalton Canyon Creek from the mouth on the Pecos river to the headwaters (Pecos River 2214)

17. Rito los Esteros from the mouth on the Rio Mora to the headwaters (Pecos River 2214)

18. Rio Valdez from the mouth on the Rio Mora to the headwaters (Pecos River 2214)

19. Winsor Creek from the mouth on the Pecos River to the headwaters (Pecos River 2214)

20. Panchuela Creek near its mouth on the Pecos River (Pecos River 2214)

21. Jacks Creek from the mouth on the Pecos River to the headwaters (Pecos River 2214)

22. Rito del Padre from the mouth on the Pecos River to the headwaters (Pecos River 2214)

23. Rito Sebodilloses from the mouth on the Rito del Padre to the headwaters (Pecos River 2214)

24. Rito Azul from the mouth on the Rito del Padre to the headwaters (Pecos River 2214)

25. Rito de los Chimayoses from the mouth on the Rito Azul to the headwaters (Pecos River 2214)

26. Rito Maestas from the mouth on the Rito del Padre to the headwaters (Pecos River 2214)

27. Jarosa Canyon Creek from the mouth on the Pecos River to the headwaters (Pecos River 2214)

28. Delaware River (2202)

29. Rayado Creek from the Miami Lake diversion to the headwaters (Canadian River 2305)

30. Sacramento River, perennial portions (Closed Basin 2801)

c. Under 40 CFR § 130.7(b)(1), States are not required to list WQLSs still requiring TMDLs where effluent limitations required by the CWA, more stringent effluent limitations required by State or local authority, or other pollution control requirements required by State, local, or federal authority, are stringent enough to implement applicable water quality standards. The regulation does not specify the time frame in which these various requirements must implement applicable water quality standards to support a State's decision not to list particular waters. EPA believes a reasonable time frame for implementation of applicable standards is two years, i.e., until the next listing cycle. Where standards will not be attained through implementation of the requirements listed in 40 CFR § 130.7(b)(1) by the time the 2000 § 303(d) list submission is due, it is appropriate for the water to be included on the § 303(d) list to ensure that implementation of the required controls, and progress towards compliance with applicable standards, is tracked. If it is determined that the water is in fact meeting applicable standards when the 2000 § 303(d) list is developed, it would be appropriate for the State to remove the water from the list at that time. The State's decision not to include the water body Willow Creek from the confluence at the Pecos River to the headwaters (2214) because an "other pollution control requirement" is in place is consistent with 40 CFR § 130.7(b)(1). Pollution control requirements for metals are required pursuant to an Administrative Order and Consent for the Tererror mine. NMED anticipates that water quality standards will be met in the next two years (Final Record of Decision for River/Stream Listings, #104).

The "Final Record of Decision for River/Stream Listings" dated June 10, 1998, details the decisions not to list water quality limited waters for the specified pollutant(s) on its 1998 § 303(d) list. These decisions are consistent with EPA regulations at 40 CFR § 130.7(b)(1).

The State properly listed waters with nonpoint sources causing or expected to cause impairment, consistent with § 303(d) and EPA guidance. Section 303(d) lists are to include all WQLSs still needing TMDLs, regardless of whether the source of the impairment is a point and/or nonpoint source. EPA's long-standing interpretation is that § 303(d) applies to waters impacted by point and/or nonpoint sources. This interpretation has been described in EPA guidance, most recently in a 1997 memorandum clarifying certain requirements for 1998 § 303(d) lists. See EPA's 1991 Guidance at 3, and National Clarifying Guidance for 1998 Section 303(d) Lists, Aug. 27, 1997, at 6. In addition, this interpretation of § 303(d) is described in detail in a May 23, 1997, memorandum from Geoffrey Grubbs, Director of the Assessment and Watershed Protection Division, EPA Office of Water, to the FACA Workgroup on Section 303(d) Listing Criteria. See Memorandum from Geoffrey H. Grubbs, Director, Assessment and Watershed Protection Division, to FACA Workgroup on Section 303(d) Listing Criteria, "Nonpoint Sources and Section 303(d) Listing Requirements," May 23, 1997. See also Memorandum from Robert Perciasepe, Assistant Administrator, Office of Water, to Regional Administrators and Regional Water Division Directors, "New Policies for Establishing and Implementing TMDLs," August 8, 1997.

Certain water bodies listed on the State's 1996 Section 303(d) list were not included on the 1998 list. This decision not to list in 1998 was supported by new information indicating that stream bottom deposits were not causing or contributing to a water quality impairment. Waters removed from the New Mexico list for this reason are identified in the State's submission.

B. Priority Ranking and Targeting

The State of New Mexico has developed a priority ranking based on consideration of the following factors: classification, use support rating, presence of threatened and endangered species, presence of NPS management agency, acute public health concern and if and NPDES permit is present (April 30, 1996, "The Process for Developing TMDLs for Point Source Wasteload Allocations and Nonpoint Source Load Allocations with the Methodology for Stream Ranking in the State of New Mexico"). The following is a summary of the priority ranking categories:

Reaches Ranked #1

Criteria: Uses not fully supported for High Quality Coldwater Fishery (HQCWF), Domestic Water Supply (DWS), Coldwater Fishery (CWF), or any combination.
Toxics are present
NPDES permit is present
NPS management agency present
Acute public health concerns, threatened or endangered aquatic species are present

Reaches Ranked #2

Criteria: Uses not fully supported for HQCWF, DWS, CWF, or any combination.
Toxics are absent
NPDES permit is present
NPS management agency present

Reaches Ranked #3

Criteria: Uses not fully supported for HQCWF, DWS, CWF, or any combination.
Toxics are present
NPDES permit is absent
NPS management agency present

Reaches Ranked #4

Criteria: Uses not fully supported for HQCWF, DWS, CWF, or any combination.
Toxics are absent
NPDES permit is absent
NPS management agency absent

Reaches Ranked #5

Criteria: Uses not fully supported for Marginal Coldwater Fishery (MCWF), Limited Warmwater Fishery (LWWF), Warmwater Fishery (WWF), Livestock Watering & Wildlife Habitat (L&WW), Irrigation (IRR), Secondary Contact (SCR), Industrial Water Supply (IS) or any combination.
Toxics are present
NPDES permit is present
NPS management agency present

Reaches Ranked #6

Criteria: Uses not fully supported for MCWF, LWWF, WWF, L&WW, IRR, SCR, IS or any combination.
Toxics are absent
NPDES permit is present
NPS management agency present

Reaches Ranked #7

Criteria: Uses not fully supported for MCWF, LWWF, WWF, L&WW, IRR, SCR, IS or any combination.
Toxics are present
NPDES permit is absent
NPS management agency present

Reaches Ranked #8

Criteria: Uses not fully supported for MCWF, LWWF, WWF, L&WW, IRR, SCR, IS or any combination.
Toxics are absent
NPDES permit is absent
NPS management agency absent

Exception: If an acute public health concern, threatened or endangered aquatic species or both is present on the reach, then the reach becomes a number 1.

EPA reviewed New Mexico's priority ranking of listed waters for TMDL development, and concludes that the State properly took into account the severity of pollution and the uses to be made of such waters. In addition, EPA reviewed the State's identification of WQLSs targeted for TMDL development in the next two years, and concludes that the targeted waters are appropriate for TMDL development in this time frame and are consistent with the schedule in the consent decree entered by the U.S. District Court for the District of New Mexico in Forest Guardians v. Browner (Civ. No. 96-0826 LH). The State has targeted the following waters and pollutants for TMDL development within two years: Lower Rio Grande (2101, 2102) Cordova Creek (2120), Rio Chamita (2116), Santa Fe River (2110), Jemez River (2106), Rio Guadalupe (2106), Cieneguilla Creek (2306), Moreno Creek (2306), and North Ponil Creek (2306).

III. Waters within Indian Country

EPA's approval of New Mexico's § 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. EPA is taking no action to approve or disapprove the State's list with respect to those waters at this time. EPA, or eligible Indian Tribes, as appropriate, will retain responsibilities under § 303(d) for those waters.

IV. Schedule for Development of TMDLs for Listed Waters and Pollutants

EPA has also received New Mexico's long-term schedule for TMDL development for all waters on the 1998 § 303(d) list. Although not required to be submitted by the State or approved by EPA, EPA notes that this schedule is consistent with the MOU between EPA and NMED and the consent decree and settlement agreement referenced above.

RECOMMENDATION REGARDING 1998 § 303(d) LIST FOR THE STATE OF NEW MEXICO:

Approval of the 1998 § 303(d) list

CONCURRENCE WITH DECISION REGARDING 1998 § 303(d) LIST FOR THE STATE OF NEW MEXICO:

W.B. Hathaway

William B. Hathaway, Director
Water Quality Protection Division
Region 6
U.S. Environmental Protection Agency

6/30/98
Date