



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
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JAN 30 2013

James Hogan
Acting Chief
Surface Water Quality Bureau
New Mexico Environment Department
Harold Runnels Building (N2056)
P.O. Box 5469
Santa Fe, NM 87502-5469

Dear Mr. Hogan:

I am writing to clarify the Environmental Protection Agency's (EPA) position on water body assessments and associated use designations for unclassified non-perennial waters. What follows is some background on how the EPA and the New Mexico Environment Department's Surface Water Quality Bureau (SWQB) determined that there was a need to develop state regulations to guide use designation decisions supported by use attainability analyses (UAAs) for unclassified non-perennial waters that provided for public participation.

The presumption that all waters are capable of supporting Clean Water Act (CWA) Section 101(a)(2) goals and the extensive number of non-perennial streams in New Mexico made it clear that there was a need for a refined approach in assessing and making appropriate use designations for these waters as required by 40 CFR 131.10. In response, the SWQB developed its Hydrology Protocol (HP) which takes into consideration hydrologic, geomorphic and biological indicators to determine the hydrology of unclassified waters or to identify ephemeral reaches within an otherwise classified segment.

Amendments to the state's water quality standards during the 2005 and 2009 triennial revisions, and subsequent approvals by the state's Water Quality Control Commission (WQCC) and EPA allow the use of the SWQB's HP to support use designations for ephemeral waters. The process for implementation of the HP was approved as an appendix to the SWQB's Water Quality Management Plan/Continuing Planning Process (WQMP/ CPP) document by the WQCC on May 10, 2011, and by EPA on December 23, 2011. The provision at 20.6.4.15 NMAC and the WQMP/ CPP procedures require UAAs based on the HP to be posted on the SWQB's water quality standards website for a 30-day public comment period. The provision also requires EPA's review and technical approval of the supporting UAAs before they can be implemented.

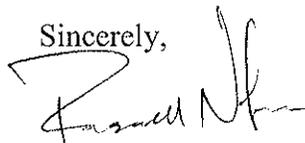
During June and July of 2011, the SWQB used the HP to document the hydrologic condition of 18 unclassified, non-perennial stream segments listed below as required by Section 20.6.4.15 NMAC. These waters are associated with 13 NPDES permitted discharges.

Bracket Canyon
Tributary to Bracket Canyon
Gachupin Canyon

Unnamed Arroyo (at Delta Person)
Unnamed Arroyo (at Firefighters Academy)
Cunningham Gulch
Mulatto Canyon Arroyo
Inditos Draw
Unnamed Tributary to Kim-me-ni-oli Wash
Defiance Draw
Unnamed Tributary to Defiance Draw
Canon del Piojo
Unnamed Tributary to Canon del Piojo
Unnamed Tributary to Arroyo Hondo
Unnamed Tributary to San Pedro Creek
Arroyo del Puerto
Unnamed Tributary to San Mateo Creek
Unnamed Arroyo (at SW Public Services)

The UAAs were initially submitted to EPA Region 6 for review and found to meet technical requirements (EPA letter dated July 20, 2012). The UAAs were posted on the SWQB's water quality standards website for a 30-day public comment period ending on August 27, 2012. The UAAs and responses to comments were submitted to EPA on October 11, 2012 for formal technical approval. EPA has determined that these UAAs are technically approvable and that the uses and criteria described in Section 20.6.4.97 NMAC are appropriate for all regulatory purposes under the CWA. EPA's technical approval is not a final action under Section 303(c) of the CWA, but is intended to give a clear indication that EPA believes the SWQB's determination is supported. As required by 20.6.4.15 NMAC, EPA anticipates that the applicability of Section 20.6.4.97 NMAC to these waters will be posted on the SWQB's water quality standards website. Once the SWQB submits the revised standards and supporting documentation, EPA will formally review the submission and take final action under Section 303(c) of the CWA.

If you have any questions concerning this letter or the technical approval, please call me at (214) 665-6646.

Sincerely,


Russell Nelson
Regional Standards Coordinator

cc: Kristine Pintado