STATE OF NEW MEXICO

STATEWIDE WATER QUALITY MANAGEMENT PLAN
AND
CONTINUING PLANNING PROCESS

NEW MEXICO
WATER QUALITY CONTROL COMMISSION

DRAFT January 2011

P.O. Box 5469
Santa Fe, New Mexico 87502

WQCC Approval Date: Insert Date

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List of Acronyms and Abbreviations

BPJ	Best professional judgment
BLM	Bureau of Land Management
BMP	Best management practice
CFR	Code of Federal Regulations
CPB	Construction Programs Bureau of NMED
CPP	Continuing Planning Process
CWA	Clean Water Act (33 U.S.C. 1251 et seq.)
CWSRF	Clean Water State Revolving Fund
DMA	Designated Management Agency
EMNRD	Energy, Minerals and Natural Resources Department
EPA	United States Environmental Protection Agency
GWQB	Ground Water Quality Bureau of NMED
LA	Load Allocation
MOS	Margin of safety
MOU	Memorandum of Understanding
NM	New Mexico
NMAC	New Mexico Administrative Code
NMED	New Mexico Environment Department
NMSA	New Mexico Statutes Annotated
NPDES	National Pollutant Discharge Elimination System
NPSMP	Nonpoint Source Management Program
OCD	Oil Conservation Division of EMNRD
ONRW	Outstanding National Resource Water
POTWs	Publicly Owned Treatment Works
QAPP	Quality Assurance Project Plan
RIP	Rural Infrastructure Revolving Loan Program
SDWA	Safe Drinking Water Act
SOP	Standard Operating Procedure
SWQB	Surface Water Quality Bureau of NMED
TMDL	Total Maximum Daily Load
UIC	Underground Injection Control
USACE	United States Army Corps of Engineers
USDA	United States Department of Agriculture
USFS	United States Forest Service
USFWS	United States Fish and Wildlife Service
WLA	Waste Load Allocation
WQA	Water Quality Act (Chapter 74, Article 6 NMSA 1978)
WQBEL	Water quality based effluent limit
WQCC	New Mexico Water Quality Control Commission
WQMP	Water Quality Management Plan

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Documents Incorporated by Reference
into this WQMP/CPP

The following documents may be updated more frequently than the WQMP/CPP. The context of each reference should be used to determine if a specific version or the most current version of the document is being referenced.

EPA Clean Watersheds Needs Survey

Ground and Surface Water Protection Regulations [20.6.2 NMAC]

New Mexico Nonpoint Source Management Program

Standards for Interstate and Intrastate Surface Waters [20.6.4 NMAC]

State of New Mexico Integrated Clean Water Act §303(d)/§305(b) Report

Procedures for Assessing Water Quality Standards Attainment for the State of New Mexico CWA §303(d)/§305(b) Integrated Report: Assessment Protocol

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Preface

In 2002, a comprehensive update to the New Mexico Water Quality Management Plan was conducted to modernize and streamline the document. The goals of the 2002 comprehensive update were to:

1. Make what had become an obscure document more readily accessible and useable;
2. Remove old work elements and strategies that were no longer required, completed, or simply outdated;
3. Reorganize the document to track current federal requirements as found in the Code of Federal Regulations;
4. Provide consolidation of the many partial updates (e.g., adoption of numerous Total Maximum Daily Load documents) that have occurred in recent years but have not been compiled in one accessible document;
5. Provide a format that supports opportunity for future growth of the Water Quality Management Plan.

Upon approval of the December 17, 2002 update to the Water Quality Management Plan, the Water Quality Control Commission directed the Surface Water Quality Bureau to revise and update the Introduction and Work Element 11 – Public Participation Program based on public comment received during the hearings associated with the December 2002 update. The purpose of the 2003 update was to expand the Introduction to provide the reader with additional background information on how water quality is managed in the state of New Mexico and to completely revise Work Element 11 to incorporate current outreach protocols and strategies.

The Continuing Planning Process was last updated in 2004 with the addition of the Antidegradation Policy Implementation Procedure. The previous update was in 1998.

The primary goals of this current comprehensive update are to:

1. Consolidate the Water Quality Management Plan and Continuing Planning Process into one document, and establish the process for updating the consolidated document;
2. Incorporate changes and new developments that have occurred over the last several years, including water quality standards amendments, completion of the Total Maximum Daily Load settlement agreement requirements, update of the Nonpoint Source Management Program, development of a wetlands program, adoption of Underground Injection Control regulations, and creation of a Water Cabinet focused on water and wastewater infrastructure;
3. Add references to new regulations for Section 401 certification of NPDES and Dredge/Fill Permits;
4. Compile and update the Total Maximum Daily Load list, and improve the process description for establishing Total Maximum Daily Loads;
5. Add the *Hydrology Protocol* as an appendix and explain how it is to be used; and
6. Update program descriptions and citations to referenced documents.

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Numerous documents include references to specific sections of previous versions of the Water Quality Management Plan and Continuing Planning Process that will become obsolete after this major restructuring. For example, some documents make reference to "Work Element 10 of the WQMP." As these other documents are revised and updated, appropriate changes will be made for clarification.

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I. INTRODUCTION

A. Purpose

Previous location[1]: *WQMP pp. 6-7; CPP pp. 5-6.*
Significant changes[2]: *identifies WQMP and CPP requirements in table format.*
Minor changes[3]: *drops discussion of "historical perspective" (evolution of CWA and WQA).*

The Statewide Water Quality Management Plan and Continuing Planning Process (WQMP/CPP) has two primary purposes. First, it is intended to provide a concise summary of the water quality management system in New Mexico (NM) and the roles of the major participants in that system. Second, it fulfills the requirements of Section 208 (area wide waste treatment management plans) and Section 303 (continuing planning process) of the federal Clean Water Act (CWA) and Section 74-6-4.B of the NM Water Quality Act (WQA), that the Water Quality Control Commission (WQCC) "…adopt a comprehensive water quality management program and develop a continuing planning process." The WQMP/CPP is implemented in conjunction with other important documents such as NM's *Standards for Interstate and Intrastate Surface Waters* and other applicable laws and regulations. The WQMP/CPP is applicable statewide, except that it is not applicable to waters under the jurisdiction of Indian tribes or pueblos recognized pursuant to CWA Section 518.

The statewide WQMP/CPP provides a consistent approach for protecting and improving water quality. Establishing such a plan ensures that the quality of water in the environment is periodically assessed, water quality standards are established to protect designated uses, and sources of pollution that may adversely impact water quality are controlled.

The nine required elements of a WQMP are found at 40 CFR 130.6, and the nine required elements of a CPP are found at 40 CFR 130.5. Table I-1 shows how this document is organized to merge these requirements. Any reference to the State's CPP or WQMP in statutes, regulations, standards or other documents refers to this document.

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[1] The changes proposed in this consolidated document are not indicated line by line. Instead, notes at the beginning of each section highlight the changes.The notes will not be retained in the final document The "previous location" refers to where the information discussed in the current section was located in the Water Quality Management Plan dated May 13, 2003 or the Continuing Planning Process document dated December 14, 2004.

[2] "Significant changes" identify substantive revisions or noteworthy re-formatting.

[3] "Minor changes" identify non-substantive revisions such as editing, corrections, reformatting, replacing text with a reference to another document, or dropping non-essential content. Additional minor changes resulting from the revised format of the consolidated document may not be noted. These changes should not be considered by EPA or others as part of the substantive update referred to in 40 CFR 130.6(e).

Table I-1: Federal Requirements for WQMP and CPP

WQMP/CPP Section	40 CFR 130.6 WQMP Requirements	40 CFR 130.5 CPP Requirements
I. Introduction	Not required by 40 CFR 130.6	40 CFR 130.5(b)(5) *The process for assuring adequate authority for intergovernmental cooperation in the implementation of the WQMP.*
II. Water Quality Standards	Not required by 40 CFR 130.6	40 CFR 130.5 (b)(6) *The process for establishing and assuring adequate implementation of new or revised water quality standards.*
III. Assessment, Monitoring and Reporting	Not required by 40 CFR 130.6	Not required by 40 CFR 130.5
IV. TMDLs	40 CFR 130.6 (c)(1) *A list of approved Total Maximum Daily Loads (TMDLs).*	40 CFR 130.5(b)(3) *The process for developing TMDLs.*
V. Effluent Limitations	40 CFR 130.6 (c)(2) *Effluent limitations including water quality based effluent limitations and schedules of compliance.*	40 CFR 130.5 (b)(1) *The process for developing effluent limitations and schedules of compliance;* 40 CFR 130.5(b)(3) *The process for developing individual water quality based effluent limitations for pollutants;* 40 CFR 130.5(b)(9) *The process for determining the priority of permit issuance.*
VI. Municipal and Industrial Waste Treatment	40 CFR 130.6 (c)(3) *Identification of anticipated municipal and industrial waste treatment works; programs to provide necessary financial arrangements for such works; establishment of construction priorities and schedules for initiation and completion of such treatment works.*	40 CFR 130.5(b)(7) *The process for assuring adequate controls over the disposition of residual waste from water treatment processing;* and 40 CFR 130.5(b)(8) *The process for ranking and prioritizing needs for construction of wastewater facilities.*
VII. Nonpoint Source Management and Control	40 CFR 130.6 (c)(4) *The regulatory and non-regulatory programs, activities and Best Management Practices (BMPs) to control nonpoint source pollution.*	Not required by 40 CFR 130.5
VIII. Management Agencies	40 CFR 130.6 (c)(5) *Identification of agencies necessary to carry out the WQMP and provision for adequate authority for intergovernmental cooperation.*	Not required by 40 CFR 130.5
IX. Implementation Measures	40 CFR 130.6(c)(6) *Identification of implementation measures necessary to carry out the WQMP.*	Not required by 40 CFR 130.5

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WQMP/CPP Section	40 CFR 130.6 WQMP Requirements	40 CFR 130.5 CPP Requirements
X. Dredge and Fill Program	40 CFR 130.6(c)(7) *Identification and development of programs for the control of dredge and fill material.*	Not required by 40 CFR 130.5.
XI. Basin Plans	40 CFR 130.6(c)(8) *Identification of any relationship to applicable basin plans developed under CWA Section 209.*	40 CFR 130.5(b)(2) *The process for incorporating elements of any applicable area-wide waste treatment plans under CWA Section 208, and applicable basin plans under Section 209.*
XII. Ground Water	40 CFR 130.6(c)(9) *Identification and development of programs for control of ground water pollution.*	Not required by 40 CFR 130.5
XIII. Determination of Compliance with WQS - Human Health Criteria	Not required by 40 CFR 130.6	Not required by 40 CFR 130.5
XIV. Public Participation	Not required by 40 CFR 130.6	40 CFR 130.5(b)(4) *The process for updating and maintaining the WQMP.*
XV. Wetlands Program	Not required by 40 CFR 130.6	Not required by 40 CFR 130.5

B. Institutional Roles and Responsibilities

Previous location: *WQMP pp. 8-15; CPP pp. 8-9.*

Significant changes:

- *WQCC: updates composition per WQA amendments.*
- *GWQB: adds UIC program and reference to SDWA.*
- *SWQB: adds wetlands program and River Ecosystem Restoration grant program.*
- *CPB: drops reference to Colonias Construction Grants Program because it no longer exists.*
- *Adds Water Cabinet.*

Minor changes:

- *WQCC: omits list of duties; refers instead to list of duties in WQA.*
- *NMED: drops organizational chart and division structure.*
- *GWQB: adds previously omitted duty (development of standards and regulations).*
- *SWQB: drops reference to SDWA and drinking water because the drinking water program generally does not fall under the WQMP nor is it implemented by SWQB; adds previously omitted monitoring & assessment duties.*
- *Condenses descriptions of state agency programs that do not fall directly under the WQMP/CPP.*
- *Regional/areawide agencies: omits DMA tallies but retains them in Section VIII. B.*

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NM's approach to water quality planning and management has evolved substantially over the last several decades, largely in response to the changing federal and state statutory mandates. Although the State currently conducts water quality planning on a statewide level, these efforts are evolving toward more of a watershed level focus in the context of the statewide planning efforts. (For the purposes of this document the term "watershed" is intended as a flexible concept, referring to an identified geographic area affecting a water body or water segment.) That is, planning and management are moving toward a holistic strategy to protect or attain the desired levels of water quality within a watershed, including, where appropriate, protection of human health and aquatic ecosystems. A successful watershed protection approach must be founded on cooperative interaction between the federal, state, and local levels of government, and between the public and private sectors.

Numerous entities at the local, state and federal level participate in water quality management – many implement portions of this WQMP/CPP, which is approved by the WQCC and EPA, while others conduct activities under other authorities. The following summary describes the institutional roles and responsibilities of the major participants in water quality management and planning in New Mexico.

Water Quality Control Commission (WQCC) – The WQCC is the water pollution control agency for NM and is responsible for developing specific water quality policy in NM, in a manner that implements the broader policies set forth by the Legislature in the NM WQA.

The WQCC adopts water quality standards to protect waters of the State, as well as various regulations aimed at achieving compliance with those standards. In addition to its formal rulemaking role, the WQCC serves as a forum to facilitate and advance a statewide policy dialogue on a variety of important water quality topics. The WQCC also serves a role in quasi-judicial administrative hearings concerning appeals of certain decisions of constituent agencies, such as permitting actions, adoption of regulations, etc. Additional duties and powers of the WQCC are defined in WQA Section 74-6-4. The fourteen members of the WQCC include:

- Secretary of the Environment Department*
- Secretary of the Department of Health*
- Director of the Department of Game and Fish*
- State Engineer*
- Chairman of the Oil and Conservation Commission*
- Director of the State Park and Recreation Division of the Energy, Minerals and Natural Resources Department (EMNRD)*
- Director of the NM Department of Agriculture*
- Chairman of the Soil and Water Conservation Commission or a Soil and Water Conservation District Supervisor designated by him/her
- Director of the Bureau of Mines and Minerals Resources at the NM Institute of Mining and Technology*
- Representative of County or Municipal Government
- Four representatives of the public to be appointed by the governor for terms of four years

(*indicates that a Commissioner can appoint a staff member designee.)

As the WQCC has no staff of its own, responsibilities for water quality management are delegated to constituent agencies. The WQCC has divided responsibility for administering WQCC regulations for discharges to surface water and to ground water between the New Mexico Environment Department and the Oil Conservation Division of EMNRD according to the type of facility or discharge. In addition to both these agencies, the Department of Game and Fish and the State Parks Division of EMNRD have also been delegated authority to enforce the WQCC regulation on disposal of refuse in a watercourse. Additional information about the WQCC can be found on its website at: http://www.nmenv.state.nm.us/oots/wqcc.htm.

New Mexico Environment Department (NMED) – NMED is the primary constituent agency responsible for implementing and enforcing the regulations and standards adopted by the WQCC. Moreover, NMED provides the principal source of technical expertise available to the WQCC in its rulemaking and other policy-setting activities. By statute, NMED is authorized to act as staff to the WQCC in proceedings other than adjudicatory or appellate proceedings in which NMED is a party.

The WQCC has assigned NMED as the constituent agency to assist in:

- Maintaining, restoring and improving the quality of the State's waters;
- Regulating discharges for compliance with regulations and standards;
- Developing water quality classifications and standards;
- Performing site application and design and specification reviews of new or expanding domestic wastewater treatment facilities;
- Undertaking monitoring and enforcement of the statutes and permits;
- Coordinating water quality management planning;
- Managing state and federal construction grant and loan assistance programs which provide financial support to municipalities for construction or improvement of wastewater treatment facilities;
- Managing the ground water quality protection program with the goal of protecting the public health and beneficial ground water uses; and
- Providing technical assistance to local governments regarding water and wastewater treatment.

WQA Section 74-6-4.F also specifically assigns the following duties to NMED:

- Provide technical services, including certification of permits pursuant to the federal CWA, and
- Maintain a repository of the scientific data required by the WQA.

The following describes bureau-specific NMED responsibilities relating to the implementation of this WQMP/CPP. For additional information, visit: http://www.nmenv.state.nm.us/.

Ground Water Quality Bureau (GWQB): The role of GWQB is to protect the quality of NM's ground water resources as mandated by the WQA, the federal Safe Drinking Water Act (SDWA), and the *Ground and Surface Water Protection Regulations* (20.6.2 NMAC); and to

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identify, investigate, and clean-up contaminated sites that pose significant risks to human health and the environment. GWQB:

- Develops ground water quality standards and regulations;
- Issues ground water pollution prevention permits;
- Implements the Department's responsibilities under the NM Mining Act to ensure that environmental issues are addressed and standards are met;
- Implements NM's underground injection control (UIC) programs;
- Oversees ground water investigation and remediation activities; and
- Identifies, investigates and remediates inactive hazardous waste sites through implementation of the federal Superfund program, agreements between the State and responsible parties, and the voluntary remediation regulations.

GWQB also strives to increase industry and public understanding and awareness of the importance of safe ground water supplies in sustaining the quality of life in NM for this and future generations, and the importance of protecting ground water quality through pollution prevention initiatives.

Surface Water Quality Bureau (SWQB): SWQB protects and improves water quality in NM's waters by controlling pollution from both discrete point sources and dispersed nonpoint sources. SWQB maintains and revises the WQMP/CPP, and is the primary bureau within NMED that is responsible for implementing the majority of the programs defined in the WQMP/CPP. Operating under the CWA, the federal Safe Drinking Water Act (SDWA), the WQA and Utility Operators Certification Act, SWQB:

- Administers watershed restoration grants (CWA Section 319 and River Ecosystem Restoration Initiative grant programs);
- Administers the wetlands program;
- Certifies federal CWA Section 402 National Pollutant Discharge Elimination System (NPDES) permits and CWA Section 404 permits for Dredge and Fill;
- Provides water and wastewater utility operator training and certification;
- Assists the WQCC in developing surface water quality standards and regulations for the State;
- Conducts monitoring and assessment activities to report on water quality status and identify impairments of NM's surface waters; and
- Develops water quality planning documents identifying pollutant load reductions necessary to attain standards in a reach (Total Maximum Daily Loads (TMDLs)).

Construction Programs Bureau (CPB): CPB handles water, wastewater, and solid waste construction funding by administering the following programs: NM Clean Water State Revolving Fund (CWSRF), also known as the Wastewater Facility Construction Loan Fund; Rural Infrastructure Revolving Loan Program; NM Solid Waste Facility Grant Fund Program; NM Special Appropriations Program; and South Valley Wastewater Facility Construction Program. As part of these programs CPB:

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- Makes publicly funded low interest loan and grant program funds available to NM local governments;
- Manages the timely construction and administrative completion of publicly funded water, wastewater, and solid waste projects; and
- Ensures that projects are environmentally sound, of high quality, and that their construction management is free of waste, fraud, and abuse.

Other NMED programs also contribute to water quality protection. For example, the Liquid Waste Program regulates individual on-site liquid waste systems in order to protect public health and to prevent contamination to ground and surface water. The Petroleum Storage Tank Bureau reduces, mitigates and eliminates the threats to the environment posed by petroleum products or hazardous material or wastes released from underground and above ground storage tanks. The Solid Waste Bureau assures that solid waste is managed in such a way as to minimize impact on the environment and public health. The Drinking Water Bureau assists communities in protecting the sources of their drinking water supplies from contamination. The Hazardous Waste Bureau regulates hazardous waste treatment, storage and disposal facilities, oversees cleanup of contaminated sites, and implements Federal Facility Compliance Orders at Los Alamos and Sandia National Laboratories.

Water Cabinet - Executive Order 2007-050 signed by Governor Bill Richardson on October 31, 2007, created a Water Cabinet to unify the direction of all executive agencies responsible for water resources within the state including promoting interagency coordination of water and wastewater infrastructure funding. The Executive Order also established the Water and Wastewater Infrastructure Development Division within NMED, and directs the division to provide leadership for an interagency effort to develop and administer a uniform application process and provide recommendations for efficient and effective use of water and wastewater loan funds. Participating agencies include the NMED, New Mexico Department of Finance and Administration, New Mexico Indian Affairs Department, New Mexico Finance Authority, United States Department of Agriculture (USDA) Rural Development, Office of the State Engineer, and the US Army Corps of Engineers (USACE).

Other State Implementing Agencies - Several other state agencies conduct activities that impact water quality and should be considered in implementing this WQMP/CPP. These include, but are not limited to:

- State Engineer's Office
- Interstate Stream Commission
- Department of Game and Fish
- State Parks Division (EMNRD)
- State Forestry Division (EMNRD)
- Oil Conservation Division (EMNRD)
- Mining and Minerals Division (EMNRD)
- Oil Conservation Commission
- Soil and Water Conservation Districts
- NM Department of Agriculture.

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Regional/Area-wide Planning Agencies – CWA Section 208 provides that the Governor of a State must identify areas of the State which, as a result of urban or industrial concentration or other significant factors, have substantial water quality problems. The Governor may designate regional planning agencies for these areas, after consultation with local governmental officials having jurisdiction over the area, to conduct the planning required by Section 208. Designated Management Agencies (DMAs) must demonstrate legal, institutional, managerial, and financial capability, and specific activities necessary to carry out their responsibilities. As specified at 40 CFR 130.12(b), CWA Section 201 funding can only be awarded to DMAs that are in conformance with the statewide WQMP/CPP.

Watershed-based Water Quality Authorities/Associations/Forums - Increasing interest in a watershed-based approach to water quality management has led to the development of a number of local and regional initiatives in NM. These initiatives reflect a great diversity of organizational models and functional roles. The various initiatives focus on a number of different priorities such as: implementation of site-specific control regulations adopted by the WQCC, information sharing (outreach and education), or implementation of remediation and restoration projects. The number and nature of these local and regional watershed initiatives in NM is evolving rapidly. No effort is made in this WQMP/CPP to comprehensively catalogue or describe such initiatives, often referred to as "grass root" initiatives. Whatever the primary focus, organizational structure, scope and level of formality of these local and regional initiatives, they are expected to play an increasingly important role in water quality management in NM.

U.S. Environmental Protection Agency (EPA) – In addition to providing a significant amount of programmatic funding through CWA grant programs, EPA has several roles with respect to NM's water quality control programs. The CWA requires EPA to review state water quality standards and either approve them as being compliant with the federal act, or to disapprove and promulgate classifications and standards for NM. TMDLs adopted by the WQCC are reviewed and approved by EPA. EPA issues NPDES discharge permits in NM which are certified by SWQB. EPA is responsible for approving CWA Section 208 plans (regional water quality management plans) submitted by states as well as state CPPs prepared in accordance with CWA Section 303(e). Finally, in addition to adopting regulations establishing water quality program requirements that must be met by states, EPA frequently issues guidance documents or policy statements on a variety of water quality topics.

Other Federal Agencies - Several other federal agencies are involved in water quality management in NM. Federal land management agencies, such as the USDA Forest Service (USFS), Department of Interior Bureau of Land Management (BLM), and National Park Service, consider water quality protection in their management programs. USACE administers the CWA Section 404 permit program, which regulates the discharge of dredged and fill material that may adversely impact waters of the United States, including wetlands. The Bureau of Reclamation has increasingly included environmental protection considerations into its management of federal water projects. USDA administers an Environmental Quality Incentive Program under the federal Farm Bill. The U.S. Fish and Wildlife Service (USFWS) consults with other federal agencies under Section 7 of the Endangered Species Act regarding activities that may adversely impact threatened or endangered species. USFWS has entered into a Memorandum of Agreement with EPA regarding consultation with respect to water quality program activities.

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The U.S. Geological Survey undertakes a variety of studies regarding water quality, including the National Water Quality Assessment program.

General Public - Public participation is an integral part of water quality management in NM. All regulatory actions of the WQCC and NMED are required to follow appropriate public comment, notice, and hearing requirements. In addition, with respect to policy-making and non-rulemaking activities of the WQCC and NMED, an opportunity for public input is often provided through informational public meetings. Moreover, an important aspect of the increasing trend toward a watershed protection approach is assuring a full opportunity for stakeholder input and participation in watershed planning and management activities.

C. Process for Assuring Intergovernmental Cooperation in the Implementation of the Statewide Water Quality Management Program

[Required by 40 CFR 130.5(b)(5)]

Previous location: *CPP pp. 21-22.*

Significant changes: *strikes reference to NM Department of Finance and Administration's "Clearinghouse System" because it no longer exists; updates composition of the WQCC.*

Minor changes: *none.*

Intergovernmental cooperation in the implementation of the WQMP/CPP Programs is provided by four factors:

1. The composition of the WQCC;
2. The delegation of responsibilities to constituent agencies by the WQCC;
3. The authority of the WQCC to enter into or to authorize its constituent agencies to enter into agreements with federal or state agencies for purposes consistent with the NM WQA; and
4. The designation of management agencies to carry out specific responsibilities under the WQMP/CPP.

Nine of the fourteen members of the WQCC are representatives of state agencies involved in some aspect of water quality management, one member represents county or municipal government, and the other four members are representatives of the public appointed by the Governor. Thus, the WQCC itself serves as a forum for exchange of information, coordination, and cooperation.

The WQCC assures that its programs and responsibilities are carried out and coordinated with adequate coverage but without duplication of effort through delegation of responsibilities to constituent agencies. The WQCC reviews and adopts such delegations at its regular open meetings and the specific delegation of responsibility becomes part of the permanent record of WQCC actions. WQCC delegations are summarized in Section I.B of this WQMP/CPP.

The authority of the WQCC to enter into or to authorize its constituent agencies to enter into agreements with other agencies provides the WQCC with a means of formally coordinating with

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agencies outside of the WQCC. This mechanism also allows the WQCC to use the expertise of other agencies in fulfilling its responsibilities.

The WQCC also assures coordination in implementing this WQMP/CPP by designating management agencies to carry out specific responsibilities. Management agencies must satisfy the requirements of 40 CFR 130.6(c)(5). Specifically, management agencies must have the legal, institutional, managerial, and financial capability and programmatic activities to carry out the designated responsibilities. The designation must also provide for intergovernmental cooperation between the designated agency and the WQCC. Management agencies must formally accept the designated responsibilities. After the WQCC has formally adopted a management agency designation, it is certified by the Governor.

D. Process for Updating and Maintaining the WQMP/CPP
[Required by 40 CFR 130.5(b)(4)]

Previous location: *CPP pp. 17-20.*

Significant changes: *replaces separate processes for administrative vs. formal WQMP updates with one process; provides for public comment at WQCC meeting for all updates, but omits opportunity to request public hearing; updates TMDL approval process.*

Minor changes: *deletes reference to work elements in previous WQMP.*

The WQCC has adopted this WQMP/CPP under the statutory authority of the NM WQA [Section 74-6-4(B)]. The WQCC has delegated responsibility for development of most elements of the plan to NMED. Other local, state and federal agencies and other governmental and non-governmental entities, including watershed planning groups, may take responsibility for implementation of particular elements. The initial plan was adopted in 1979 and there have been several subsequent updates. To ensure that the plan continues to provide an effective framework for water quality management, updates are developed as needed to reflect population growth, economic development, changing water quality conditions, results of implementation activities, new and revised effluent limitations, and new requirements, including new laws, regulations, and standards. Because the WQMP/CPP plays an important role in guiding the state's water pollution control programs, changes in the plan require open processes of government and efforts to promote public awareness and input.

During development of a proposed update, NMED may provide information, solicit comments, or hold informal public meetings in the geographic area likely to be impacted or other appropriate area. NMED may also submit a proposed update to EPA for technical review before presentation to the WQCC. The WQCC considers a proposed update at one of its public meetings, after public notice including at least a 30-day public comment period has been published. At the WQCC meeting, the WQCC allows all interested persons reasonable opportunity to provide comment before deciding whether to approve the update. After adopting an update, the WQCC submits it to EPA Region 6 for approval, along with a letter from the Governor or designee certifying that the update is consistent with all other parts of the plan.

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If the proposed update is a TMDL, NMED follows the procedure described in Section IV. Once the TMDL has been adopted by the WQCC and approved by EPA, Appendix B of this WQMP/CPP is updated to include the TMDL.

Several documents that relate to components of this WQMP/CPP are incorporated by reference (see p. ##). Documents incorporated by reference may be later revised, after public notice and participation appropriate to each document. Documents requiring approval by EPA are considered incorporated after EPA approval of the revised document. Accordingly, as documents incorporated by reference are updated, the WQMP/CPP is effectively updated. This approach is consistent with EPA regulations at 40 CFR 130.5 and 130.6.

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II. SURFACE WATER QUALITY STANDARDS

A. Introduction

Previous location: *WQMP 17-20.*

Significant changes: *Adds designated uses and criteria for unclassified waters and notes human health criteria, per WQS amendments.*

Minor changes:

- *Generalizes list of designated uses and refers to full list in WQS.*
- *Drops mention of site-specific narrative criteria and shortens description of narrative vs. numeric criteria.*
- *Drops repetition of WQS language in 20.6.4.10.B & C NMAC regarding revisions to uses and criteria.*
- *Summarizes levels of antidegradation protection rather than reproducing WQS language in 20.6.4.8 NMAC.*
- *Drops information in 20.6.4.9 on how to nominate ONRWs.*

NM's *Standards for Interstate and Intrastate Surface Waters* (20.6.4 NMAC) establish surface water quality standards that consist of designated uses of surface waters of the State, the water quality criteria necessary to protect the uses, and an antidegradation policy. The State of NM does not have jurisdiction to adopt water quality standards for land on Indian pueblos and reservations located within NM's borders.

The water quality standards state the following objective:

> *The State of New Mexico is required under the New Mexico Water Quality Act … and the federal Clean Water Act … to adopt water quality standards that protect the public health or welfare, enhance the quality of water, and are consistent with and serve the purposes of the Mexico Water Quality Act and the federal Clean Water Act. It is the objective of the federal Clean Water Act to restore and maintain the chemical, physical, and biological integrity of the nation's waters, including those in New Mexico. This part is consistent with Section 101(a)(2) of the federal Clean Water Act, which declares that it is the national goal that wherever attainable, an interim goal of water quality that provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983. Agricultural, municipal, domestic and industrial water supply are other essential uses of New Mexico's surface water; however, water contaminants resulting from these activities will not be permitted to lower the quality of surface waters of the state below that required for recreation and protection and propagation of aquatic life and wildlife, where practicable (20.6.4.6 NMAC).*

Section 303(c)(1) of the CWA requires the State to hold public hearings at least once every three year period. The purpose of this "triennial review" is to review water quality standards and propose necessary revisions as appropriate.

The components of water quality standards are described below.

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1. General Criteria

General criteria are established to sustain and protect existing or attainable uses of surface waters of the State. These general criteria apply to all surface waters of the State unless site-specific criteria are elsewhere identified. Surface waters of the State shall be free of any water contaminant in such quantity and of such duration as may, with reasonable probability, injure human health, animal or plant life or property, or unreasonably interfere with the public welfare or the use of property.

General criteria have been established for the parameters identified in 20.6.4.13 NMAC, including: bottom deposits and suspended or settleable solids; floating solids, oil and grease; color; organoleptic quality (odor and taste of fish and water); plant nutrients; toxic pollutants; radioactivity; pathogens; temperature; turbidity; total dissolved solids (TDS); dissolved gases; and biological integrity.

2. Designated Uses and Criteria

The system for assigning surface water quality standards is based on adopting designated uses that identify the uses to be protected on a stream segment or lake, and then adopting numeric criteria for specific pollutants to protect those uses. Within each river basin, waters are divided into individual "segments" for classification and standard-setting purposes (20.6.4.101 through 20.6.4.899 NMAC). Default designated uses also apply to unclassified waters (20.6.4.97-99 NMAC).

Designated uses include fish culture, domestic water supply, irrigation, primary contact, secondary contact, livestock watering, wildlife habitat, and several aquatic life subcategories. The full list of designated uses is specified in 20.6.4.900 NMAC.

Use-specific numeric criteria are provided in 20.6.4.900 NMAC and apply to all waters with those designated uses unless otherwise specified in 20.6.4.97 through 20.6.4.899 NMAC.

Numeric criteria have specific quantitative limits. The water quality standards also incorporate numeric "human health" criteria established to protect human health when aquatic organisms are consumed from waters containing pollutants.

3. Antidegradation Policy

NM's antidegradation policy, which is based on the requirements of 40 CFR 131.12, describes how waters are to be protected from degradation (Subsection A of 20.6.4.8 NMAC). At a minimum, the policy protects existing instream uses. Water quality that exceeds the levels necessary to support the propagation of fish, shellfish, and wildlife, and recreation in and on the water is to be maintained unless the WQCC finds that allowing lower water quality is necessary to accommodate important economic and social development. Finally, waters designated as Outstanding National Resource Waters (ONRWs) are to receive the highest level of antidegradation protection. Designated ONRWs are listed in 20.6.4.9 NMAC.

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B. Process for Establishing and Assuring Implementation of Water Quality Standards

[Required by 40 CFR 130.5(b)(6) for CPP]

Previous location: *WQMP pp. 20-21; CPP pp. 23-25.*

Significant changes: *none.*

Minor changes: *Condenses discussion by referencing rather than reproducing WQCC guidelines, antidegradation policy and implementation plan at 20.6.4.8 NMAC, and NPSMP. Updates title of Region 6 NPDES guidance.*

Under the WQA, the WQCC adopts standards for surface and ground waters of the State. As required by Section 303(c) of the CWA, the WQCC conducts a triennial review of its surface water quality standards. NMED is responsible for initiating the triennial review; however, anyone may propose new or revised standards to the WQCC at any time under the WQA.

NM follows a process to adopt new or revised surface water quality standards that conforms to requirements in the CWA, federal regulations, the WQA, the NM State Rules Act [14-4-1 NMSA 1978], and the NM Open Meetings Act [10-15-1 NMSA 1978]. In order to establish any water quality standard, the WQCC shall conduct a public hearing. The WQCC must base its decision on evidence presented at the public hearing. Detailed *Guidelines for Water Quality Control Commission Regulation Hearings* have been approved by the WQCC and are applied to water quality standards hearings. These guidelines are designed to encourage participation, allow effective presentation of evidence and points of view, allow participants an opportunity to submit information, and assure that hearings are conducted in a fair and equitable manner. The guidelines also address the filing and examination of documents, pre- and post-hearing procedures, public notice, participation by the public, conduct of the hearing, deliberation and appeal, and ensure that statutory requirements are met.

New or revised water quality standards adopted by the Commission are filed with the State Records Center. Pursuant to the provisions of the State Rules Act, the standards become effective for state purposes 30 days after filing.

New or revised surface water quality standards adopted by the WQCC must be approved by EPA Region 6 in order to become effective for CWA purposes. The WQCC-approved standards are certified by the state Attorney General as being duly adopted pursuant to state laws and then submitted to EPA for review and approval. CWA Section 303(d) requires that EPA notify NM of its approval within 60 days or its disapproval within 90 days of receipt of the package. If the State does not remedy the problems EPA identifies in disapproving a standard within 90 days, EPA must promulgate a standard to supersede the disapproved state standard.

Implementation of water quality standards occurs through controls on point source pollutant discharges and through best management practices applied to nonpoint sources of pollution (see Sections V and VII of this WQMP/CPP). Implementation activities are described in Subsection B of 20.6.4.8 NMAC. Water quality standards are enforceable pursuant to the WQA through administrative penalties under Section 74-6-10 or through civil actions under Section 74-6-10.1(B), whether violations of standards are caused by point or nonpoint sources.

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Processes used by the state to assure that surface water quality standards will be met differ depending on whether or not the receiving water body is water quality limited. A water quality limited – or "impaired" -- segment is any water body segment where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable standards, even after the application of the technology-based effluent limitations in NPDES permits required by CWA Sections 301(b) and 306 and other required pollution controls. The process of monitoring, assessing and reporting on water quality is described in Section III of this WQMP/CPP. The judgment on whether a water body segment is impaired is made contaminant by contaminant; a segment could be impaired for some contaminants but not for others. In any case, whether or not a segment is impaired, the State's antidegradation policy requirements, as detailed in the *Antidegradation Policy Implementation Procedure* (Appendix A), must be met.

1. Water Body Segments That Are Not Water Quality Limited

If a water body segment already meets and is expected to continue meeting standards, and thus is not water quality limited, the implementation of standards is relatively straightforward. Every point source application for a new or revised NPDES permit is evaluated by EPA in accordance with *Procedures for Implementing National Pollutant Discharge Elimination System Permits in New Mexico*[4]. Each NPDES permit issued must contain requirements necessary to achieve water quality standards [40 CFR 122.4(d)] and receive State certification provided by NMED under CWA Section 401. Because water quality standards are being met, any existing nonpoint sources are already considered adequately controlled through existing voluntary best management practices (BMPs). Organizations or individuals planning new nonpoint source discharges can obtain information and apply for assistance from NMED, Soil and Water Conservation Districts and other entities to enable them to adopt effective BMPs so that standards, including the antidegradation policy, will continue to be met.

2. Water Quality Limited Segments

CWA Section 303(d)(1) requires that TMDLs must be established for water quality limited segments at a level necessary to meet the applicable water quality standards. TMDLs are described in Section IV of this WQMP/CPP.

Point Sources: In addition to meeting the same requirements imposed where water quality is not limited, each NPDES permit issued for a water quality limited segment must incorporate any waste load allocation (WLA) that has been assigned through the TMDL process.

Nonpoint Sources: The *New Mexico Nonpoint Source Management Program* (NPSMP) describes the activities and resources devoted to the control of nonpoint source pollution. The NPSMP utilizes the target load reductions identified in TMDL documents for basic goal setting. More information about the NPSMP is in Section VII of this WQMP/CPP.

[4] EPA Region 6, Permits Section, NPDES Permits Branch, Water Quality Protection Division, January 23, 2009, or most recent revision.

C. Use of the Hydrology Protocol

This is a new section not previously included in the WQMP or CPP.

The *Hydrology Protocol*, attached as Appendix C, provides a methodology for distinguishing among ephemeral, intermittent, and perennial streams and rivers in NM. As such, it can be helpful in identifying the appropriate water quality standards for a particular water. NM's water quality standards assign distinct designated uses to unclassified ephemeral, intermittent and perennial waters (see 20.6.4.97-99 NMAC), and also identify many classified waters by their hydrology, e.g., "perennial tributaries to" or "perennial reaches of" (see 20.6.4.101-899 NMAC).

The *Hydrology Protocol* was specifically developed to generate documentation of the uses supported by the hydrology of a given waterbody. It can used to provide technical support for a use attainability analysis, or to identify unclassified waters within an otherwise classified segment. These applications are discussed in more detail below. The decision tree in Figure II-1 supplements the discussion with a graphical depiction of how to use the results of the *Hydrology Protocol*, and whether a UAA is required, when evaluating an unclassified, a potentially unclassified, or a classified stream.

1. Technical support for Use Attainability Analysis (UAA)

UAA requirements for NM are established in 20.6.4.15 NMAC. A CWA §101(a)(2) use may not be removed or changed to a use requiring less stringent criteria unless a UAA demonstrates that attainment of the use is not feasible based on one of the factors identified in 40 CFR 131.10(g):

> *(1) Naturally occurring pollutant concentrations prevent the attainment of the use; or*
>
> *(2) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or*
>
> *(3) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or*
>
> *(4) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use; or*
>
> *(5) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses; or*
>
> *(6) Controls more stringent than those required by sections 301(b) and 306 [technology-based effluent limitations] of the Act would result in substantial and widespread economic and social impact.*

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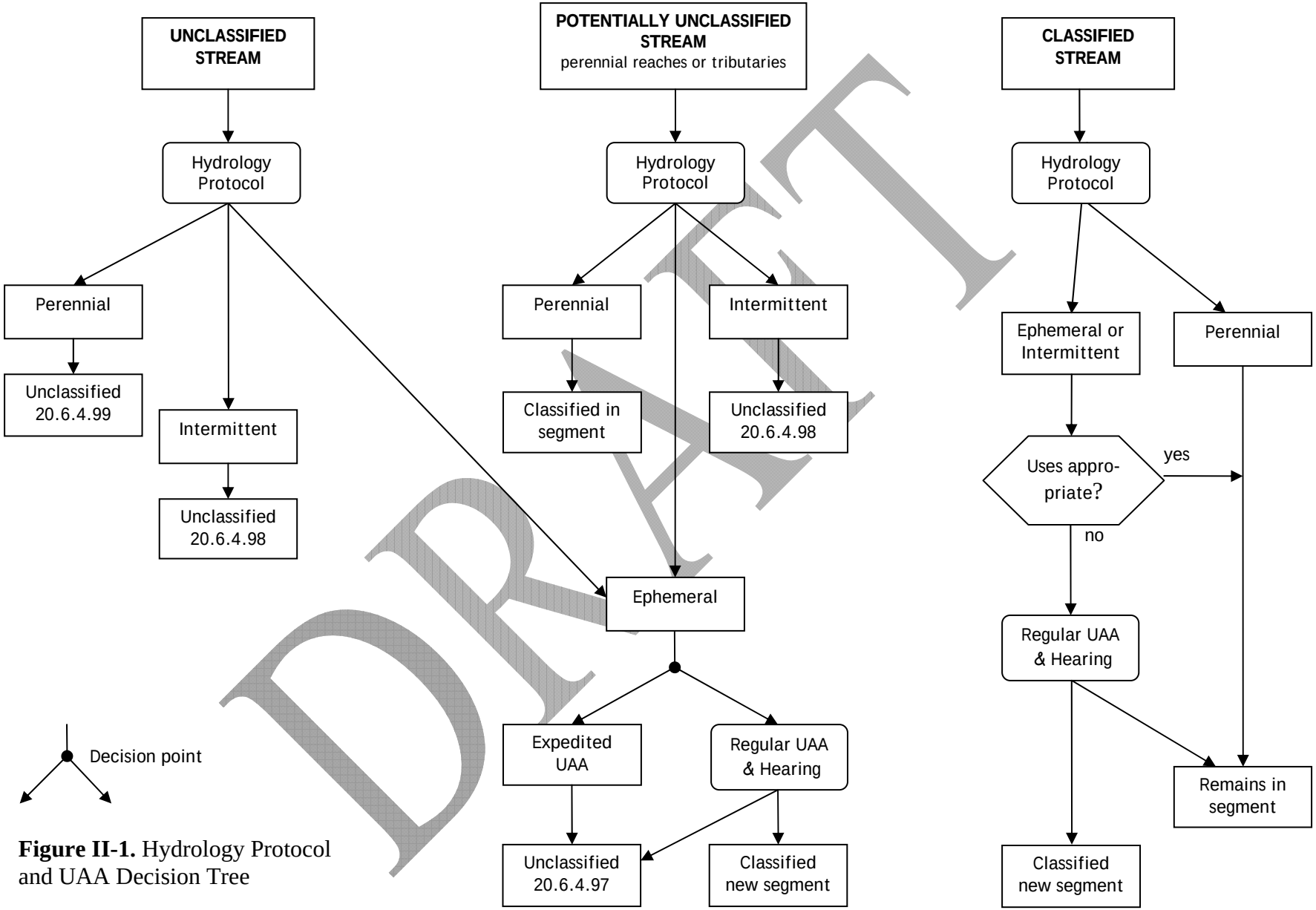

Figure II-1. Hydrology Protocol and UAA Decision Tree

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A UAA must rely on a scientifically defensible method. While use of the *Hydrology Protocol* is not required, it may be helpful especially if the factor limiting attainment of a use is either factor (2) or factor (5) above. Both of these factors refer to a natural condition, so it is important that the UAA discuss whether the current uses identified by the results of the *Hydrology Protocol* also respresent the naturally attainable uses. If not, then a different factor should form the basis for the UAA. For example, if the intermittency of a stream is the result of a diversion, the UAA would rest on factor (4) concerning hydrologic modifications, and documentation in addition to the *Hydrology Protocol* results would be needed to demonstrate that "it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use."

2. Expedited UAA Process for Ephemeral Waters

The water quality standards allow for an expedited UAA process for certain ephemeral waters. Unlike regular UAAs described above, the expedited UAA process requires the use of the *Hydrology Protocol*.

Unclassified nonperennial waters are subject to the water quality standards specified in 20.6.4.98 NMAC, with designated uses of wildlife habitat, livestock watering, marginal warmwater aquatifc life, and primary contact. These uses meet the CWA Section 101(a)(2) goals. EPA presumes that all waters can attain these uses unless a UAA demonstrates otherwise, and NM's water quality standards reflect the same presumption. However, if justified by a UAA, ephemeral waters may be placed into a separate section in the water quality standards for ephemeral waters, 20.6.4.97 NMAC, with designated uses of wildlife habitat, livestock watering, limited aquatic life, and secondary contact. The difference between the designated uses and criteria is summarized in Table II-1.

Table II-1: Water Quality Standards for Unclassified Nonperennial Waters

Applicable Criteria	**20.6.4.97 NMAC** Unclassified Ephemeral (UAA required)	**20.6.4.98 NMAC** Unclassified Intermittent (includes ephemeral unless identified in 20.6.4.97)
Aquatic life and contact uses	Limited aquatic life Secondary contact	Marginal warmwater aquatic life Primary contact
Acute aquatic life criteria	Yes	Yes
Chronic aquatic life criteria	No	Yes
Human health – organism only criteria	Only for persistent pollutants (identified in 20.6.4.900.J NMAC)	Yes
Temperature	None	32.2ºC maximum
Dissolved oxygen	None	5.0 mg/L minimum
pH	None	6.6-9.0
E. coli	548 cfu/100 mL geometric mean 2507 cfu/100 mL single sample	206 cfu/100mL geometric mean 940 cfu/100 mL single sample

The expedited UAA process facilitates the efficient application of the limited aquatic life and secondary contact uses to ephemeral waters where appropriate. The process is described in 20.6.4.15.C NMAC:

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If a use attainability analysis based on the department's hydrology protocol (latest edition), approved by the commission, demonstrates to the satisfaction of the department that Section 101(a)(2) uses are not feasible in an ephemeral water body, the department shall post the use attainability analysis on its water quality standards website and notify its interested parties list of a 30-day public comment period. After reviewing any comments received, the department may proceed by submitting the use attainability analysis and response to comments to region 6 EPA for technical approval. If technical approval is granted, the water shall be subject to 20.6.4.97 NMAC. The use attainability analysis, the technical approval, and the applicability of 20.6.4.97 NMAC to the water shall be posted on the department's water quality standards website. The department shall periodically petition the commission to list ephemeral waters under Subsection C of 20.6.4.97 NMAC and to incorporate changes to classified segments as appropriate.

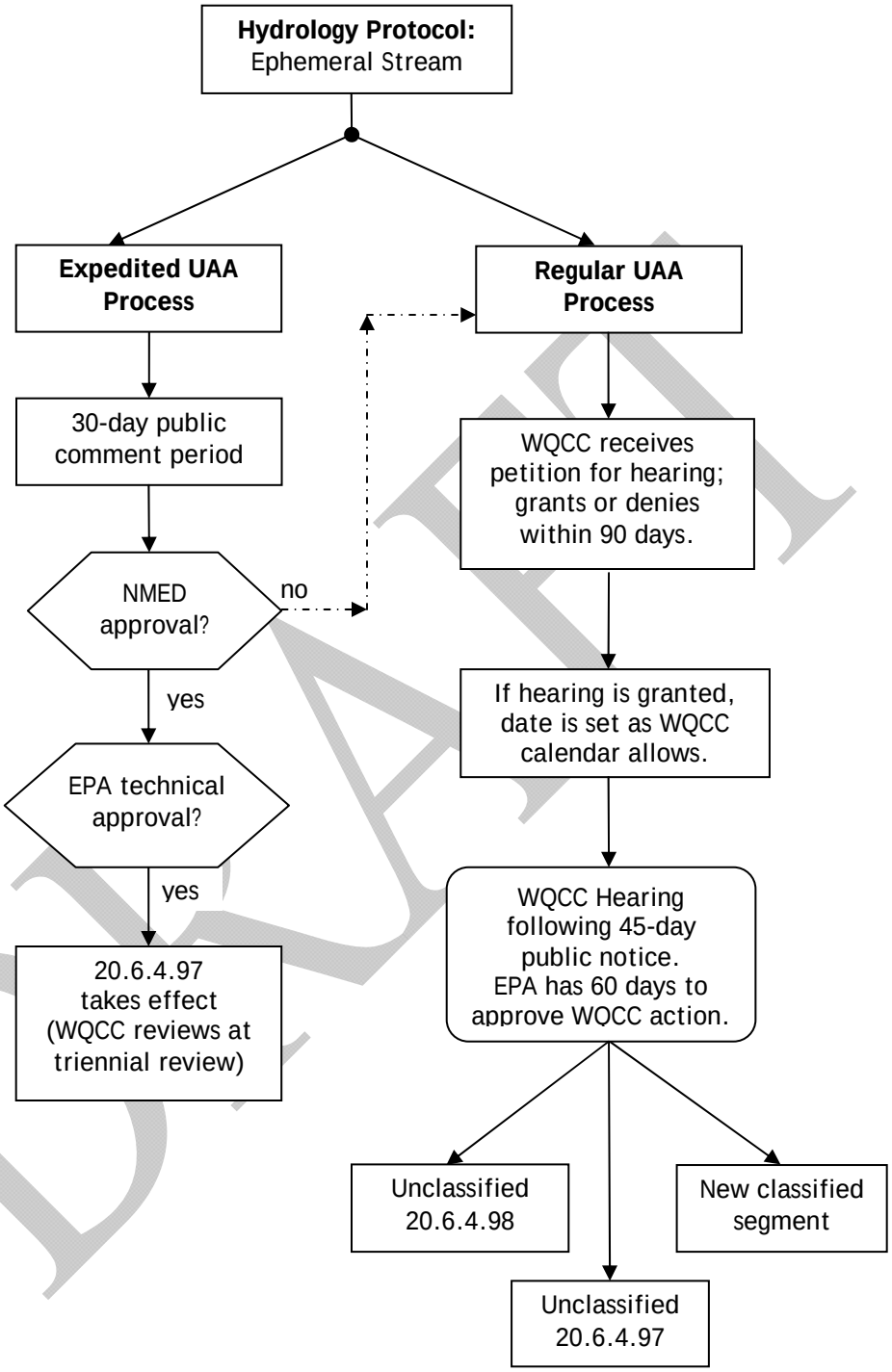
SWQB or another party may conduct the UAA based on the *Hydrology Protocol*, but SWQB determines whether to proceed with the expedited UAA process. If SWQB concludes that the UAA demonstrates that limited aquatic life and secondary contact are the highest attainable uses, SWQB then moves forward with the expedited UAA process described above by posting the UAA on its website and notifying the public of a 30-day public comment period. If SWQB concludes that the UAA does not provide sufficient evidence for the change in uses, based on a review of the data or public comment, then the expedited process ends. However, the proponent still has the option of petitioning the WQCC to hold a hearing on modifying the designated use.

The expedited process may only be used in the circumstance described in this provision (i.e., basing a UAA on the *Hydrology Protocol* to justify placing an ephemeral water under 20.6.4.97 NMAC). The regular rulemaking process is available for other methodologies, for other factors identified in 40 CFR 131.10(g), and for other changes such as completely removing uses, adding uses, or assigning site-specific criteria. The decision tree in Figure II-2 compares the expedited and regular UAA processes for an unclassified ephemeral stream.

In order to demonstrate that Section 101(a)(2) uses are not feasible in an ephemeral water, the UAA must show that the current uses identified by the results of the *Hydrology Protocol* also represent the naturally attainable uses based on the factor identified in 40 CFR131.10(g)(2)[5]. Circumstances that might affect that conclusion should be identified and discussed. Examples include drought conditions, human alterations such as dams or diversions, or a planned discharge that would increase streamflow. The Cover Sheet provided in the Hydrology Protocol should be used for the expedited UAA process, and additional explanation should be attached if needed.

[5] *Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met.*

Figure II-2: Decision Tree for Expedited UAA Process for Unclassified Ephemeral Stream



Even though the expedited process allows for the limited aquatic life and secondary contact uses to take effect without a rulemaking, SWQB will periodically petition the WQCC (at least as often as the triennial review) to list the approved waters by name in Subsection C of 20.6.4.97 NMAC. At that hearing, the WQCC has its usual range of decision options: to adopt SWQB's

recommendation, to revert the stream to unclassified under Section 20.6.4.98 NMAC, or to classify the stream.

3. Documentation for the Identification of Unclassified Waters

Numerous classified segments in the water quality standards include only perennial waters, without specifically identifying which reaches are perennial. For example, the description of Segment 20.6.4.109 NMAC states, "all other perennial reaches of tributaries to the Rio Puerco." Nonperennial reaches of these tributaries remain unclassified. In such a case, the *Hydrology Protocol* can be used to determine whether a particular reach is perennial and therefore included in the classified segment, or nonperennial and therefore subject to the designated uses and criteria for unclassified waters in 20.6.4.98 NMAC.

Such a determination does not require a UAA or a hearing because it does not change the designated uses or criteria; it merely allows for the applicable uses to be properly identified. It is similar to determining whether a reach of stream is under tribal or state jurisdiction, a determination which may also require field verification. The applicable water quality standards will be documented in the *State of New Mexico CWA §303(d)/§305(b) Integrated Report*, which is submitted to the WQCC and EPA for approval.

If a nonperennial reach is found to be ephemeral, then the expedited UAA process may be followed as described above to place the stream under 20.6.4.97 NMAC.

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III. SURFACE WATER QUALITY MONITORING, ASSESSMENT AND REPORTING

Monitoring, assessment, and reporting are ongoing throughout the state. This WQMP/CPP relies upon these activities to identify priorities and recommend control measures.

A. Monitoring

Previous location: *WQMP pp. 16-17.*

Significant changes: *adds reference to 10-year monitoring and assessment strategy; expands QA/QC discussion slightly and adds review for QAPP and SOPs.*

Minor changes: *none.*

Monitoring of surface water quality is an important component of the State's water quality management program and is essential to identify and characterize water quality problems, revise water quality standards, and develop and evaluate the results of control actions. Additionally, water quality monitoring data can be used for pollutant allocation computer modeling and as evidence for enforcement actions. The goal of the monitoring program is to provide information to assess the quality of surface waters and direct water quality management activities. The surface water monitoring strategy implemented by SWQB focuses on collecting chemical, physical, and biological data from rivers, streams, lakes, reservoirs, and other aquatic habitats. The comprehensive strategy is described in the *State of New Mexico Surface Water Quality 10-Year Monitoring and Assessment Strategy*.

The SWQB's monitoring program follows standard operating procedures for sample collection, sample processing, field data analysis, and quality assurance/quality control. All sampling and analysis methodologies must conform to the requirements of 20.6.4.14 NMAC and the *Quality Assurance Project Plan for Water Quality Management Programs* (QAPP) and associated *Standard Operating Procedures for Data Collection* (SOPs). If sampling to determine compliance for enforcement purposes, then sampling and analysis must also conform to the provisions set forth in 20.6.4.12 NMAC. The QAPP describes the procedures that must be followed to ensure that all data collected or used by SWQB are reliable and of a defined level of quality. Mandatory use of the QAPP and SOPs are key elements in implementing this WQMP/CPP. The QAPP is reviewed and updated annually and submitted to EPA for approval. The SOPs are updated as necessary to include new or revised sampling procedures.

SWQB utilizes a rotating watershed survey design for water quality monitoring. Select watersheds are monitored each year with a return frequency dependent on available staff and financial resources. In even numbered years, the monitoring results are summarized in the *State of New Mexico CWA §303d/§305b Integrated Report* as required by Section 303(d) of the CWA and 40 CFR 130.7.

B. Assessment

Previous location: *WQMP p. 16.*

Significant changes: *Adds explanation about use of non-SWQB data.*

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Minor changes: *Adds specific reference and link to Assessment Protocol.*

Assessment is the process by which water quality data are analyzed to determine if water quality standards are being attained. Assessment is performed in accordance with the *Procedures for Assessing Water Quality Standards Attainment for the State of New Mexico CWA §303(d)/§305(b) Integrated Report: Assessment Protocol*. Water quality assessments are then used as the basis for water quality management decisions.

Assessments are based on surface water quality data collected by SWQB, the U.S. Geological Survey, and other entities. Additional data are solicited every two years with emphasis on watersheds that are assessed during that reporting cycle. All data submitted and used for assessment must meet the minimum quality assurance/quality control requirements specified in the *QAPP*. On the basis of available data, SWQB identifies those surface water segments not meeting water quality standards.

Assessment activities support nearly all aspects of the water quality management processes described in this WQMP/CPP, including:

- Determining whether water quality standards are being attained;
- Determining whether proposals to make changes to the standards are needed;
- Identifying the need for water quality based effluent limitations in NPDES permits;
- Reviewing actions which require an antidegradation analysis to ensure that antidegradation requirements are met;
- Developing source water protection plans designed to reduce pollutants and provide safe drinking water quality;
- Determining efficacy of CWA Section 319 projects for watershed protection/restoration; and
- Certifying federal permits under CWA Section 401.

C. Reporting

Previous location: *WQMP pp. 16-17.*

Significant changes: *none.*

Minor changes: *deletes reference to State of the Environment Report because it is no longer published, and adds mention of watershed surveys and special studies.*

The CWA has two primary requirements for reporting water quality in a state, the "303(d) List," and the "305(b) Report." These requirements have been combined into the *State of New Mexico CWA §303(d)/§305(b) Integrated Report*. The two elements are described below.

1. 303(d) List

Section 303(d) of the CWA requires states to submit to EPA a list of waterbodies that do not meet applicable water quality standards. Once listed, the state is required to develop total maximum daily load (TMDL) planning documents. Waterbodies and segments are included on the 303(d) list of impaired waters based on an evaluation of biological, chemical and/or physical

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data that demonstrate nonattainment of applicable numeric or narrative standards resulting in designated use impairment.

2. 303(b) Report

Section 305(b) of the CWA requires states to prepare and submit a report biennially to EPA on the status of water quality within the state. The report provides an assessment of water quality in a state, a summary of water quality management programs, and an estimate of the environmental, social, and economic impacts associated with achieving the objectives of the CWA. EPA uses the information contained in the Section 305(b) Report to update the US Congress on: progress toward meeting the goals of the CWA; the costs and benefits of working towards these goals; program plans and needs in areas such as permits, grants, effluent guidelines, etc.; and mechanisms to implement needed changes.

SWQB also compiles additional water quality reports that summarize the results of watershed surveys and special studies. All reports are available upon request or from the SWQB website at: http://www.nmenv.state.nm.us/swqb/MAS/.

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IV. TOTAL MAXIMUM DAILY LOADS (TMDLs)

[Required by 40 CFR 130.6(c)(1) for WQMP]

A. Introduction to TMDLs

Previous location: *WQMP pp. 23-24; CPP pp. 14, 16.*
Significant changes*: reorganizes and expands explanation of TMDLs.*
Minor changes*: none.*

Pursuant to Section 303(d) of the CWA, TMDLs must be developed for water quality limited segments (also known as "impaired" water bodies). Water quality limited segments are those segments where water quality does not meet or is not expected to meet applicable water quality standards even after point source discharges achieve the technology based effluent limitations required by Sections 301 and 306 of the CWA [40 CFR 130.20)]. TMDLs are established on a pollutant by pollutant basis for each assessment unit. Once a segment is identified as water quality limited, the State is required to:

1. Calculate a TMDL for the segment;
2. Develop more stringent effluent limitations and WLAs, if necessary, for point sources on the segment;
3. Identify nonpoint sources of pollution and, if possible, quantify and assign load allocations (LAs) to them; and
4. Identify BMPs, where appropriate, to mitigate nonpoint source pollution.

A TMDL establishes the amount of a pollutant a water body can assimilate without causing the water to exceed water quality standards set to protect the water's designated uses (e.g., primary contact, wildlife habitat, etc.), and can best be described as an "allowable budget" for pollutant influx to a water body. The pollutant budget, or loading, is generally determined by multiplying the applicable water quality standards by the flow by a parameter-specific conversion factor. The TMDL budget takes into account existing and anticipated pollutant loads and lays a course for the restoration and maintenance of water quality.

TMDLs are described by EPA[6] as the sum of the individual WLAs for point sources and LAs for nonpoint sources and natural background sources, tributaries, or adjacent segments. WLAs represent that portion of a TMDL that is established to limit the amount of pollutants from existing and future point sources so that surface water quality is protected at all flow conditions.

The TMDL process uses water quality analyses to predict water quality conditions and pollutant concentration. Limits on wastewater pollutant loads are set and nonpoint source allocations are established so that predicted receiving water concentrations do not exceed water quality criteria. TMDLs and WLAs/LAs should be established at levels necessary to attain and maintain the applicable narrative and numerical water quality standards, with seasonal variations and a margin of safety that takes into account any lack of knowledge concerning the relationship between

[6] EPA. March 1991. *Technical Support Document for Water Quality-based Toxics Control*. [EPA/505/2-90-001] Section 4.1, page 67.

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point and nonpoint source loading and water quality. Determination of WLAs, LAs and TMDLs should take into account critical conditions for stream flow, loading, and water quality parameters. Conditions that will protect the receiving water are determined based on numeric water quality criteria.

Loads are allocated or budgeted among sources in a manner that describes the amount (the total maximum load) that can be assimilated into the water body without causing the standard or "budget" to be exceeded. Both point and nonpoint pollutant sources must be considered during TMDL development. Nonpoint sources and natural background are grouped into a LA and point sources are grouped into a WLA. By federal regulation (40 CFR Part 130.7), the budget must also include a "margin of safety" (MOS). TMDLs can be described by the following equation:

$$TMDL = LA + WLA + MOS$$

Thus, in technical terms, TMDLs are defined as the sum of the individual WLAs for point sources and LAs for nonpoint sources and background conditions, as well as a MOS.

In practical terms, a TMDL document is a water quality planning document that establishes specific goals to meet surface water quality standards. Once the required TMDL calculations are documented, probable sources of pollutants are examined, and a brief outline of a potential implementation plan is described. TMDL documents include: the segment of river/stream/lake and parameter of concern, the rationale behind the margin of safety, discussion of any anticipated future growth, description of the public participation process, and any other relevant aspect of the TMDL process.

B. Implementation of TMDLs

Previous location: *WQMP pp. 23-24.*
Significant changes*: expands explanation of how TMDLs affect point and nonpoint sources.*
Minor changes*: none.*

As TMDLs are developed and approved, they are incorporated into Appendix B of this WQMP/CPP and used as the basis for implementation of water pollution control activities. For point sources, TMDLs are implemented through NPDES permits, whereas for non-point sources, TMDLs are implemented through the NPSMP.

1. Point Sources

The results of the determination of a TMDL and corresponding WLAs are incorporated into the WQMP/CPP as specific effluent limitations for the point source discharge. Pursuant to 40 CFR 130.12(a), NPDES permits must be consistent with the WQMP. Each NPDES permit issued must contain requirements necessary to achieve water quality standards [40 CFR 122.4(d)]. Therefore, where a WLA has been assigned through the TMDL process, the WLA must be incorporated into the permit. The process for establishing individual effluent limitations is described in Section V of this WQMP/CPP.

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2. Nonpoint Sources

The New Mexico Nonpoint Source Management Program is a voluntary program. A TMDL provides the opportunity for possible funding of watershed restoration projects through the CWA Section 319 Nonpoint Source Management Program (See Section VII). This program seeks voluntary solutions to address nonpoint source water quality problems and provides funding opportunities to implement the solutions. Establishment of a TMDL could facilitate this process because the direction of limited CWA Section 319 funds may be prioritized for implementation of TMDLs.

C. Process for the Development of TMDLs and Individual Water Quality Based Effluent Limitations for Pollutants

[Required by 40 CFR 130.5(b)(3) for CPP]

Previous location: *CPP p. 15.*

Significant changes: *updates and expands explanation of TMDL development.*

Minor changes: *none.*

TMDLs are incorporated into the WQMP/CPP upon approval by EPA. The process SWQB uses for developing a TMDL is as follows:

1. Develop a list of Category 5 assessment units and pollutants from the most recent *State of New Mexico CWA §303d/§305b Integrated Report*.
2. Collate all existing and readily available data necessary to draft TMDLs, including: individual and general coverage for NPDES permits, field and laboratory data (chemical, physical and biological) from the assessment process, and critical flow data.
3. Plan a sampling effort to collect any additional data that are needed.
4. Draft the TMDL document; solicit and incorporate comments from EPA and NMED staff as appropriate.
5. Conduct public participation for the TMDL in accordance with Section XIV. This includes a public comment period of at least 30 days. SWQB generally issues a public notice in at least one newspaper of general circulation and a newspaper in the affected area, mails or emails public notice to appropriate portions of the SWQB mailing list and all members of the WQCC, and posts the notice and the draft TMDL document on the NMED SWQB website. The public notice must include:
    a. a description of the watershed and parameters for which the TMDL is proposed;
    b. a brief explanation of the TMDL;
    c. the start and end dates of the public comment period;
    d. how and where to submit comments for inclusion in the record;
    e. a description of the process for requesting approval of the TMDL before the WQCC;
    f. how to obtain a copy of the TMDL document or request additional information;
    g. the location, date, time, purpose, and format of any proposed public meeting or other forum for obtaining information;
    h. contact information for persons with disabilities to obtain assistance in participating in the public process.

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6. Hold at least one public meeting in the watershed during the public comment period to present the document and solicit comments on the TMDL, including the list of Probable Sources.
7. After the public comment period closes, collate all comments, prepare a response to comments, and make appropriate changes to the draft TMDL based on those comments. The response to comments is added as an appendix to the draft TMDL and provided to those stakeholders who submitted written comments.
8. Post the final draft TMDL on the NMED website no less than 10 days before the WQCC meeting.
9. Present the final draft TMDL at a WQCC meeting and request approval. WQCC comments are incorporated into the TMDL as necessary.
10. Following adoption by the WQCC as an amendment to the WQMP/CPP, send the TMDL to EPA Region 6 for approval. The submittal to EPA shall be certified by the Governor or the Governor's designee (e.g., NMED Secretary) that the WQMP/CPP update is consistent with all other parts of the plan as required by 40CFR130.6(e).
11. Post the approved TMDL document, the response to comments, the WQCC approval document, and the EPA approval document on NMED SWQB's website, and update the administrative record accordingly.
12. Update Appendix B of this WQMP/CPP to include the approved TMDL.

D. Process for Prioritizing the Development of TMDLs

Previous location: *WQMP pp. 24, 31; CPP p. 15.*
Significant changes: *updates and expands explanation of TMDL prioritization.*
Minor changes: *none.*

In 1996, Forest Guardians and Southwest Environmental Center jointly filed a lawsuit against EPA alleging that adequate TMDLs had not been developed by the State as required under §303 of the CWA. The State of NM was not a litigant in this suit. In 1997, EPA and plaintiffs negotiated a consent decree and settlement agreement avoiding formal litigation. The consent decree and the settlement agreement combined set forth a 20-year schedule to address TMDLs for many stream segments in the State. EPA and NMED signed a Memorandum of Understanding (MOU) outlining tasks the State will complete to meet the terms of the settlement agreement. NMED received EPA approval of the final TMDL under the Consent Decree in 2007 and the Consent Decree was officially dismissed by the Department of Justice on April 21, 2009.

SWQB continues to develop TMDLs following the schedule and terms established in the settlement agreement and the MOU between NMED and EPA. Following completion of the required schedule, NMED will prioritize TMDL development based on the results of ongoing monitoring and assessment. Additionally, NMED will develop TMDLs as specified in negotiated CWA §106 and §604(b) grant commitments. The State may also act independently of the aforementioned agreements to adopt TMDLs as it may find necessary and appropriate. TMDLs may be reviewed and updated in response to changed conditions or new data.

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E. Completed TMDLs

Previous location: *WQMP pp. 24-35; CPP p. 15.*
Significant changes: *moves list of TMDLs to an appendix; deletes list of WLAs.*

Completed and approved TMDLs are listed in Appendix B, which is posted at http://www.nmenv.state.nm.us/swqb/TMDL/ and updated as new TMDLs are approved.

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V. EFFLUENT LIMITATIONS

A. Introduction

[Required by 40 CFR 130.6(c)(2)]

Previous location: *WQMP pp. 36-38; CPP pp. 12-13.*

Significant changes:

- *updates, reorganizes and clarifies requirements regarding and determination of technology based and water quality based effluent limitations;*
- *replaces explanation of compliance schedules with language in 20.6.4.12 NMAC*
- *retains only the elements of the "Strategy" on WQMP p. 38 pertaining to NMED (drops those referring to the permitting authority)*
- *drops fecal coliform bacteria effluent limitation because water quality standards now include bacterial criteria for all surface waters*

Minor: *none.*

The primary mechanism for controlling point source discharges to "waters of the United States"[7] in NM is the NPDES permit program established under Section 402 of the CWA. The State of NM is not currently delegated authority for issuing NPDES permits; therefore, EPA Region 6 in Dallas is the permitting authority responsible for issuing NPDES permits in NM and specifying the amount and concentration of pollutants (i.e. effluent limitations) that a permittee may discharge to a surface water. The permitting authority is also responsible for the enforcement of effluent limitations stipulated by NPDES permits.

Two types of effluent limitations are developed for NPDES permits: technology based effluent limitations and water quality based effluent limitations (WQBELs). The applicability of effluent limitations is summarized in Table V-1.

Table V-1. Effluent Limitations for NPDES Permits

Technology Based		Water Quality Based	
Publicly Owned Treatment Works (POTWs) – Secondary Treatment [40 CFR 133]	Industry – Effluent Limitation Guidelines [40 CFR Subchapter N, or Best Professional Judgment (BPJ)]	WLA from approved TMDL	If there is no TMDL/WLA, a WQBEL may be developed on a case by case basis to protect water quality
Additional State-adopted control strategies for protection of public health or environment		WQBELs may be expressed as chemical specific limitations (e.g., phosphorus) or as whole effluent toxicity requirements (e.g., biomonitoring)	

[7] As defined in 40 CFR 122.2.

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Federal regulations require that NPDES permits include technology based effluent limitations and other necessary effluent limitations for toxic pollutants and sewage sludge. EPA is responsible for development and promulgation of these technology based effluent limitations pursuant to CWA Sections 301, 304, 306, 307, and 316. Federally promulgated technology based effluent limitations for each industry are published by EPA in 40 CFR Subchapter N - *Effluent Guidelines and Standards*. If technology based effluent limitations have not been established by regulation for a particular industry, a permit writer may establish effluent limitations based on "best professional judgment" (BPJ).

If technology based effluent limitations are not adequate to protect applicable water quality standards, then NPDES permits must contain WQBELs [40 CFR 122.44(d)]. WQBELs may be calculated as part of a wasteload allocation (WLA) in a TMDL (see Section IV of this WQMP/CPP) and incorporated into an NPDES permit, or WQBELs may be based on reasonable potential calculations at the time an NPDES permit is drafted by EPA. If a WLA has been developed in a TMDL, the permitting authority is required to incorporate it into the NPDES permit.

If a WLA has not been developed as part of a TMDL, the permitting authority reviews effluent discharge data to ensure that NPDES permits are protective of water quality standards. For all pollutants that have a reasonable potential to cause or contribute to a violation of a water quality standard, the permitting authority performs calculations or modeling to determine effluent limitations. This review is done in accordance with applicable federal regulations and guidance.

In addition, the WQCC previously adopted additional control strategies[8] for the protection of public health and the environment. These strategies are as follows:

- NMED will review NPDES permit actions for purposes of state certification[9]. NMED will assure through appropriate review and communication with the permitting authority that permit requirements and effluent limitations are compatible with appropriate state law, protect water quality standards and implement the water quality management plan.

- NMED will use the effluent limitation of 6.0-9.0 for pH for state certifications of NPDES permits except when:
    a. more stringent limitations are needed to meet the antidegradation policy and implementation plan of the New Mexico Water Quality Standards, (20.6.4 NMAC);
    b. the WQCC has adopted more stringent limitation in a point source load allocation.

  In all cases, state-certified effluent limitations for pH shall be stringent enough so that receiving waters meet water quality standards.

[8] This strategy was originally adopted by the WQCC in 1989 in the WQMP's Work Element 6 and retained in the 2002 WQMP update in Work Element 2. In the 2011 update, the previously included fecal coliform limitation of 500 cfu/100 mL was dropped because the water quality standards now apply bacterial criteria to all waters.

[9] CWA Section 401 and WQA Section 74-6-5.E.

For effluent discharges that are not being addressed by an NPDES permit or that are in extended violation of an NPDES permit, Sections 20.6.2.2100-2102 NMAC of the *Ground and Surface Water Protection Regulations* specify additional effluent limitations for the protection of surface water quality.

Compliance schedules for NPDES permits are allowed by 20.6.4.12 NMAC and 40 CFR 122.47. Compliance schedules are established by EPA in a manner consistent with other schedules across Region 6. Compliance schedules may be included in NPDES permits at the time of renewal or modification and are written to require compliance at the earliest practicable time. Compliance schedules include milestone dates and provisions for submitting progress reports and a final report detailing activities conducted toward meeting compliance schedule provisions.

The permitting authority may not issue an NPDES permit that is in conflict with this WQMP/ CPP [40 CFR 130.12(a)]. Effluent limitations, including WQBELs and compliance schedules where applicable, are contained in NPDES permits, which can be viewed at http://www.nmenv.state.nm.us/swqb/Permits/index.html.

B. Process for Development and Certification of Effluent Limitations and Schedules of Compliance for NPDES Permits

[Required by 40 CFR 130.5(b)(1) for CPP]

Previous location: *WQMP p. 37; CPP p. 12.*

Significant changes: *adds reference to proposed certification regulations; strikes NM's certification options (certify, certify with conditions, deny) because these are established in more detail in the proposed certification regulations.*

As the current NPDES permitting authority for NM, EPA Region 6 develops effluent limitations and schedules of compliance in accordance with its *Procedures for Implementing NPDES Permits in New Mexico*, which is based on applicable federal regulations and guidance. NPDES permits may not be issued until the State is provided an opportunity to review and certify the permit. The WQA assigns the responsibility for certifying permits issued under the CWA to NMED (Section 74-6-4.F), and also specifies the conditions under which a certification shall be denied (Section 74-6-5.E). If SWQB certifies that additional or more stringent effluent limitations are necessary, EPA is obligated to incorporate them into the NPDES permit.

Note: *Inclusion of the following paragraph as drafted is contingent upon WQCC approval of certification regulations. The hearing for consideration of the proposed regulations is scheduled for January 2011.*

Section 20.6.2.2001 NMAC of the *Ground and Surface Water Protection Regulations* sets forth procedures for state certification of NPDES permits. The procedures specify public notice requirements, a public comment period, the content and distribution of a certification or denial, timeframes, and appeal requirements.

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C. Process for Determining the Priority of Permit Issuance
[Required by 40 CFR 130.5(b)(9) for CPP]

Previous location: *CPP p. 12.*

Significant changes*: states explicitly what was previously only implicit: that EPA determines prioritization.*

As the current permitting authority for NM, EPA Region 6 determines the priority of NPDES permit issuance.

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VI. MUNICIPAL AND INDUSTRIAL WASTE TREATMENT

[Required by 40 CFR 130.6(c)(3) for WQMP]

A. Clean Watersheds Needs Survey

Previous location: *WQMP p. 39.*

Significant changes*: updates name and current content of the Clean Watersheds Needs Survey.*

Minor changes: *shortens discussion slightly.*

Every four years EPA conducts the Clean Watersheds Needs Survey and submits a report to Congress in compliance with CWA Section 516. The report is comprehensive assessment of the capital needs to meet the water quality goals set in the CWA. The states and EPA collect information about: publicly owned wastewater collection and treatment facilities, stormwater and combined sewer overflows control facilities, nonpoint source pollution control projects and decentralized wastewater management.

The State of NM participates in these surveys by collecting information and submitting it to EPA. The current version of the report is available at: http://www.epa.gov/cwns/ and is incorporated into the WQMP/CPP by reference.

B. Clean Water State Revolving Fund

Previous location: *CPP p. 30.*

Significant changes*: none.*

Minor changes: *adds reference to designated management agencies.*

The CWA as amended in 1987 authorized EPA to make capitalization grants to the states to establish revolving loan funds, to which the states must make 20% matching contributions. The Clean Water State Revolving Fund (CWSRF) provides affordable loans for the construction of wastewater treatment facilities to prevent or abate water pollution in eligible communities. Any municipality, county, incorporated county, sanitation district, water and sanitation district or any similar district, recognized Indian tribe or other issuing agency created pursuant to a joint powers agreement action on behalf of any entity under state law which has jurisdiction over the disposal of domestic sewage, industrial wastes, or other wastes may apply for loan assistance under the Act provided they qualify for such funding. Construction loans funds may be awarded only to wastewater management agencies designated by WQCC [40 CFR 130.12(b)]. See Section VIII of this WQMP/CPP for an explanation and list of designated wastewater management agencies. CPB administers the loan program under 20.7.5, 20.7.6 and 20.7.7 NMAC and WQA Sections 74-6A-1 to 74-6A-15.

C. Rural Infrastructure Revolving Loan Program

This is a new section not previously included in the WQMP or CPP.

The Rural Infrastructure Act (Chapter 75, Article 1 NMSA 1978) created the Rural Infrastructure Revolving Loan Program (RIP) in 1988. The purpose of the RIP is to provide financial assistance

to local authorities for the construction or modification of water supply facilities. The Rural Infrastructure Act was amended in 2001 to include construction or modification of wastewater facilities

Any incorporated city, town, village, mutual domestic association, or water and sanitation district whose water supply facility serves a population of less than twenty thousand persons or a county that serves a population of less than two hundred thousand. These types of projects can be financed through RIP:

- Eligible water, wastewater and water pollution control projects
- Water pipelines
- New sewer interceptors and collectors
- Infiltration/inflow correction
- Water and sewer system rehabilitation
- Treatment plant improvements
- Non-point source projects (i.e. septic tanks)
- Cost of water rights acquisition
- Eligible solid waste facilities including collection, disposal, storage and recycling
- Engineering studies and design
- Project inspection
- Easement and right-of-way
- Project legal costs
- Purchase of equipment

D. Special Appropriations Program

This is a new section not previously included in the WQMP or CPP.

CPB provides oversight for water, wastewater and other environmental infrastructure construction projects funded through the Special Appropriations Program. These are state grants for special projects issued annually when authorized by the NM Legislature during the legislative session and approved by the Governor. Since 1973 NMED has managed over $200 million in Special Legislative Appropriations for construction of community water supplies, wastewater facilities and other environmentally related projects.

E. Uniform Funding Application

This is a new section not previously included in the WQMP or CPP.

The electronic Uniform Funding Application was developed to provide a mechanism for applicants to fill out an infrastructure funding application which is common to all state and federal funding agencies that provide money for water and wastewater improvements. This single point of application is the first step in determining eligibility of applicants and provides a uniform application process and means of providing recommendations for efficient and effective use of water and wastewater loan funds. NMED's Water and Wastewater Infrastructure

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Development Divison administers this application, which can be accessed at: http://ufa.nmenv.state.nm.us/APPLICATION_open.php.

F. Process for Priority Rating of Wastewater Construction Loans Projects and Management of the Priority List

[Required by 40 CFR 130.5(b)(8) for CPP]

Previous location: *CPP p. 30.*

Significant changes: *updates and expands explanation.*

As part of its administration of the wastewater construction loans program NMED has devised a priority rating system to rank projects eligible for funding. The priority system process is consistent with the federal requirements in 40 CFR 35.915 and is described in the following documents: the Intended Use Plan and the Project Funding Background. Current versions of these documents and the resulting CWSRF Integrated Projects Priority List are available on the CPB's website at: http://www.nmenv.state.nm.us/cpb/cwsrf.html. The procedures establish guidelines for the process by which a community applies for placement on the priority list for future eligibility in applying for a CWSRF loan or grant. It also establishes guidelines to provide a systematic, fair and consistent approach regarding how each eligible application is ranked. As part of the funding process, CPB must review wastewater treatment facility plans developed under the CWSRF for consistency with this WQMP/CPP.

The priority rating process CPB uses for wastewater construction loan projects is summarized as follows:

1. Determine the time frame for opening the priority list per federal requirements.
2. Send out an invitation to communities to apply.
3. Receive applications from communities.
4. Review and rate the applications.
5. Inform applicants if they are not eligible for the CWSRF and if they may be eligible for other funding programs.
6. Perform a technical review of each application using a priority rating system. The priority criteria are described in the CWSRF Intended Use Plan.
7. Compile the CWSRF Integrated Projects Priority List using the criteria in the Intended Use Plan.
8. Notify applicants of their placement and ranking on the priority list, and post the priority list on its website at: http://www.nmenv.state.nm.us/cpb/cwsrf.html.
9. Prepare a plan that identifies the intended uses of the CWSRF and describe how those uses support the goal of the fund.
10. Submit the draft intended use plan to EPA for comment and approval.

CPB reviews the priority rating system annually and proposes any amendments deemed necessary for effective program implementation. The system, as amended, and the priority list are brought to public hearing. The final decision by WQCC on any revisions to the priority system is based on the hearing. The amended system must then be approved by EPA.

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G. Process for Controlling Disposition of Residual Waste from Wastewater Treatment Processing

[Required by 40 CFR 130.5(b)(7) for CPP]

Previous location: *CPP p. 29.*

Significant changes: *none.*

Minor changes: *minor updates and edits.*

NM recognizes the importance of proper biosolids management to prevent ground and surface water pollution. The state allows several methods for the disposal of municipal sludge:

1. The disposal of dry sludge in landfills, or composting and reuse, regulated under 40 CFR 503 and NM's *Solid Waste Management Regulations* at 20.9.1 – 20.9.10 NMAC.
2. Land application including the injection of liquid sludge into subsurface soil, regulated under 40 CFR 503, Subpart B and NM's *Ground and Surface Water Regulations* at 20.6.2 NMAC and 40 CFR 503, Subpart B.
3. Surface disposal within an approved disposal unit, regulated under 40 CFR 503, Subpart C and NM's *Ground and Surface Water Protection Regulation*s at 20.6.2 NMAC.

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VII. NONPOINT SOURCE MANAGEMENT AND CONTROL

[Required by 40 CFR 130.6(c)(6)]

Previous location: *WQMP, p. 42.*

Significant changes: *updates description to be consistent with recently updated and approved program.*

A. The Nonpoint Source Management Program

Nonpoint sources of water pollution are recognized as major contributors to water pollution in NM, as well as the nation. Principal sources of surface water nonpoint source pollution in NM include on-site liquid waste disposal, roads, recreation, urban storm water run-off, erosion from rangelands, agricultural activities, construction, silviculture, wildfires, resource extraction and land disposal. Hydromodification may affect attainment of designated uses by diverting water out of stream channels, by impounding waters, and through channelizing and dredge-and-fill activities. Principal known sources of nonpoint source ground water pollution in rural and suburban areas include household septic tanks, cesspools, hard rock mines, and agricultural activities.

NM's plan for management of nonpoint source pollution is described in the New Mexico Nonpoint Source Management Program (NPSMP). Included in this document are six objectives that facilitate achievement of program goals. The purpose of the NPSMP is to describe dynamic programs and progressive actions necessary to reduce pollutants from nonpoint sources entering surface water and ground water. Implementation of this program will help NM succeed in attainment of surface water quality criteria that will fully protect designated uses as described in the State's water quality standards, meet the goals of the federal CWA and ensure ground water quality for municipal, domestic, and agricultural uses.

The NPSMP has established a process to develop programs and activities within watersheds that will facilitate the achievement of surface water quality standards. Watershed-based planning is emphasized as a means of coordinating watershed restoration efforts, fostering watershed associations, and encouraging partnership among agencies, nongovernmental organizations, and the public. The NPSMP supports local watershed-based implementation of TMDLs and also coordinates with other land and resource management agencies that have established resource protection programs and activities.

The NPSMP uses a voluntary approach to achieve water quality improvements. Incentives to voluntarily implement projects and restoration efforts include competitive grant funding through Section 319(h) of the federal CWA and technical support and guidance through SWQB. EPA has provided watershed planning guidance in the *Nonpoint Source Program and Grants Guidelines for States and Territories*[10]. These Guidelines also state that completion of watershed planning per the Guidelines is a requirement for Section 319 funds to be used for water quality restoration activities.

[10] Federal Register, October 23, 2003

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In order to fund water quality improvements, SWQB issues annual requests for proposals for projects to be considered for funding from the federal CWA Section 319(h) Nonpoint Source Program Grant. The requests for proposals identify impaired waters with TMDLs describing the impairments, and a smaller category of impaired waters which do not require TMDL development because the impairments are thought to be caused by insufficient flow rather than excessive pollutant loading (Category 4C waters). Proposed projects must address impairment issues in these waters through planning or implementation.

SWQB has reviewed, upgraded, and will continue to implement all Section 319(b) management program components. These components include:

- Identification of BMPs appropriate to nonpoint source pollution problems in NM, as well as appropriate application and implementation of these BMPs;
- A schedule of milestones that provides focus, traceable events, and deadlines for program implementation;
- Identification of funding sources and potential partnerships based on available funding programs; and
- Identification of federal financial assistance programs and development projects.

Another important element of the NPSMP is coordination with government agencies. Many of the stream segments which have been or are water quality limited due to nonpoint source pollution pass through public lands. A number of the federal agencies involved have agreed, formally or informally, to ensure that all new and renewed land use authorizations, easements, rights-of-way documents, allotment management plans, term-grazing permits, and other agreements involving permitted activities on properties administered by the federal agency would have enforceable provisions for compliance with water quality standards. Efforts under these agreements have resulted, and are expected to continue to result, in the implementation of BMPs and mitigation measures at many sites.

Road construction and maintenance (or lack thereof) has also been a major source of nonpoint source pollution throughout the State. In 2008 NMED updated a MOU with the NM Department of Transportation for a program of sound BMP implementation at road construction and maintenance sites.

B. Planning Strategy for Nonpoint Source Management

The NPSMP is incorporated into the WQMP/CPP by reference, and future revisions will be automatically incorporated by reference upon their approval by EPA. As a result of implementing this program, measurable results will be achieved, such as reduced nonpoint source pollutant loadings and a reduction in the number of impaired water bodies throughout the State. The NPSMP identifies six objectives: watershed planning, improving water quality, protecting water quality, education and outreach, protecting groundwater quality, and interagency cooperation.

Milestones used to verify whether objectives are being met include:

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- By 2012 all nine planning elements identified in the Nonpoint Source Program and Grants Guidelines for States and Territories will be addressed in three watershed plans covering forty-nine priority watersheds. Priority watersheds are the sixth code watersheds with 12-digit hydrologic unit codes that contain, or drain directly to, impaired waters with TMDLs.
- By 2014 all nine planning elements will be addressed in two additional watershed plans covering twenty additional priority watersheds.
- By 2045 all nine planning elements will be addressed in every watershed-based planand watershed-based plans will be complete for all priority watersheds.
- By 2012 water quality conditions will be improved in three priority watersheds using the watershed approach. For the purposes of this verification item, improvement of water quality will be counted for water quality problems that were recognized in the CWA §303(d) List included in Appendix B of the *2002 §305(b) Report: Water Quality and Water Pollution Control in New Mexico*. This version of the List is used by EPA as a baseline for measuring water quality improvement. The actions leading to this milestone likely will have been initiated in 2009 or earlier.
- By 2014 water quality conditions will be improved using the watershed approach in an additional three priority watersheds.

"Improved" above means that one or more of the impairment causes identified in 2002 are removed for at least 40 percent of the impaired waterbodies or impaired miles/acres, or there is significant watershed-wide improvement, as demonstrated by valid scientific information, in one or more water quality parameters associated with the impairments[11]. The NPSMP also provides a schedule by which water quality improvement activities will begin within a specific number of priority watersheds by 2012, 2014, and 2045, with water quality standards being fully achieved within twenty years of the initial year of implementation.

Revisions to the NPSMP will be made and implemented on an as needed basis, but are required at least once every five years.

[11] 2006-2011 EPA Strategic Plan

VIII. MANAGEMENT AGENCIES

[Required by 40 CFR 130.6(c)(5) for WQMP]

A. Designated Management Agencies for Wastewater Management

Previous location: *WQMP p. 43-47.*

Significant changes: *none.*

Minor changes: *drops repetitive information about tribal management agencies.*

Under CWA Section 208, WQMPs are to include identification of agencies necessary to implement the Plan and provision for adequate authority for intergovernmental cooperation. Designated Management Agencies (DMAs) must demonstrate legal, institutional, managerial, and financial capability, and specific activities necessary to carry out their responsibilities. As specified at 40 CFR 130.12(b), CWA Section 201 funding can only be awarded to DMAs that are in conformance with the statewide WQMP. Accordingly, 84 municipalities (including Los Alamos County), two counties, 11 sanitation or water and sanitation districts, four state agencies, and two Native American tribal entities have been designated wastewater management agencies.

The WQCC has the responsibility of designating management agencies. Management agency designations must be certified by the Governor [40 CFR 130.6(e)], and EPA shall accept such designations unless it is found that the DMAs do not have adequate specified authorities required in CWA Section 208(c)(2) [40 CFR 130.9(d)].

Incorporated municipalities, counties, and sanitation and water and sanitation districts have the necessary authorities under state law to satisfy the requirements of Section 208(c)(2) of the CWA. State law provides the designated State agencies with the necessary authority to design, construct, operate, and maintain wastewater treatment plants and to accept and utilize state and/or federal funds for these purposes.

The Governor certified the designation of 97 wastewater management agencies in 1980. Additional management agencies were certified in September 1983, August 1984, October 1985, April 1999, and May 2001. A total of 103 wastewater management agencies have been designated.

Designated wastewater management agencies are listed in Table VIII-1. Each agency that has accepted this designation shall be responsible for wastewater management in its facility planning area and shall, if the agency satisfies applicable federal regulations, be able to receive CWA Section 201 construction program funding.

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Table VIII-1. Designated Management Agencies for Wastewater Management

INCORPORATED MUNICIPALITIES Agency Designated	Accepted	Rejected
Alamogordo	X	
Albuquerque	X	
Artesia	X	
Aztec	X	
Bayard	X	
Belen	X	
Bernalillo	X	
Bloomfield	X	
Capitan	X	
Carlsbad	X	
Carrizozo	X	
Causey	X	
Chama	X	
Cimarron	X	
Clayton	X	
Cloudcroft	X	
Clovis	X	
Columbus	X	
Corona	X	
Cuba	X	
Deming	X	
Des Moines	X	
Dexter	X	
Dora	X	
Eagle Nest	X	
Elida	X	
Encino	X	
Espanola	X	
Estancia	X	
Eunice	X	
Farmington	X	
Floyd	X	
Folsom	X	
Fort Sumner	X	
Gallup	X	
Grady	X	
Grants	X	
Grenville		X
Hagerman	X	

INCORPORATED MUNICIPALITIES Agency Designated	Accepted	Rejected
Hatch	X	
Hobbs	X	
Hope		X
House	X	
Jal	X	
Jemez Springs	X	
Lake Arthur	X	
Las Cruces	X	
Las Vegas	X	
Logan	X	
Lordsburg	X	
Los Alamos County	X	
Los Lunas	X	
Loving	X	
Lovington	X	
Magdalena	X	
Maxwell	X	
Melrose	X	
Moriarity	X	
Mosquero	X	
Mountainair	X	
Pecos	X	
Portales	X	
Questa	X	
Raton	X	
Red River	X	
Reserve	X	
Rio Rancho	X	
Roswell	X	
Roy	X	
Ruidoso	X	
San Jon	X	
San Ysidro	X	
Santa Fe	X	
Santa Rosa	X	
Silver City	X	
Socorro	X	
Springer	X	
Sunland Park	X	

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INCORPORATED MUNICIPALITIES Agency Designated	Accepted	Rejected
Taos	X	
Tatum	X	
Texico	X	
Truth or Consequences	X	
Tucumcari	X	
Tularosa	X	
Vaughn	X	
Virden		X
Wagon Mound	X	
Willard		X

COUNTIES Agency Designated	Accepted	Rejected
Valencia	X	
Dona Ana	X	

SANITATION DISTRICTS / WATER & SANITATION DISTRICTS Agency Designated	Accepted	Rejected
Alpine Village Sanitation District	X	
Anthony Sanitation District	X	
Bluewater Water & Sanitation District		X
El Valle de los Ranchos Water & Sanitation District	X	
Lakeshore City Sanitation District	X	
Pena Blanca Water & Sanitation District	X	
Ranchos de Placitas Sanitation District	X	

SANITATION DISTRICTS / WATER & SANITATION DISTRICTS Agency Designated	Accepted	Rejected
San Rafael Water & Sanitation District	X	
Thoreau Water & Sanitation District	X	
Twining Water & Sanitation District	X	
Williams Acres Water & Sanitation District	X	
Yah-ta-hey Water & Sanitation District	X	

STATE AGENCIES Agency Designated	Accepted	Rejected
Corrections Dept.	X	
Dept. of Finance and Administration	X	
Health and Environment Dept.	X	
Natural Resources Dept.	X	

NATIVE AMERICAN TRIBAL ENTITIES Agency Designated	Accepted	Rejected
Navajo Tribal Utility Authority (interim wastewater management agency)	X	
Pueblo of Pojoaque	X	

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B. Management Agencies for Nonpoint Source Program Management

Previous location: *WQMP, p. 47.*
Significant changes: *none.*
Minor changes: *slight re-wording.*

The NPSMP, which is incorporated by reference into this WQMP/CPP, identifies specific federal, state and local agencies with a role in implementing nonpoint source pollution management and control. Interagency agreements are developed as needed to outline management responsibilities unique to each agency's area of responsibility and expertise.

C. Process for Designating Management Agencies

Previous location: *WQMP, pp. 46-47.*
Significant changes: *none.*
Minor changes: *reserves the federally defined term "DMA" for wastewater management agencies.*

As economic development and growth continue in NM, or as the need arises, additional DMAs for wastewater will be considered. The WQCC will consider new DMAs upon presentation of a petition requesting such designation. Designation of a management agency will occur only after appropriate public participation and presentation of relevant authorities by the applicant.

For nonpoint source management, agencies or organizations participating through formal agreements under the NPSMP will be considered a management agency for purposes of the WQMP/CPP.

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IX. IMPLEMENTATION MEASURES

[Required by 40 CFR 130.6(c)(6) for WQMP]

Previous location: *WQMP, pp. 48-49.*
Significant changes: *none.*
Minor changes: *omits repetitive information.*

A. Introduction

This section addresses implementation measures for the programs that are listed in this WQMP/CPP. Schedules that specify when pollution control programs are expected to be implemented are useful in tracking the progress of control programs incorporated into the WQMP/CPP. Implementation schedules inform management agencies responsible for the programs and other interested or affected parties when significant milestones leading to implementation are expected to occur.

Where appropriate or required, individual documents also contain additional implementation procedures specific to a program. For example, Appendix A describes the implementation procedure for the State's antidegradation policy. Another example is the NPSMP that identifies implementation and financing of measures for nonpoint source pollution control.

Implementation schedules may also be affected by statutory or Court imposed orders. An example of a statutory schedule is CWA Section 303(c) that requires States to review their water quality standards every three years. An example of a Court imposed schedule is the consent decree and settlement agreement that resulted from *Forest Guardians and Southwest Environmental Center v. Carol Browner, Administrator, U. S. Environmental Protection Agency* and the consequent MOU between EPA and NMED for the development of TMDLs (see Section IV of this WQMP/CPP).

Measures for financing these programs arise from a variety of sources including federal grants (e.g., CWA Sections 106, 201, and 319), state budgets authorized by the Legislature, state revolving funds, local governments, cost sharing with stakeholders (public and private) or other means as appropriate to the task.

B. Planning Strategy for Implementation Measures

Implementation measures will be completed by:

- Using the process descriptions in this WQMP/CPP as a reference guide to program implementation and scheduling.
- Adhering to statutory, regulatory and court sanctioned schedules.
- Using funding sources appropriate to the task.
- Posting on NMED's website anticipated or tentative review schedules. Examples include but are not limited to: triennial review of water quality standards and biennial review of the *State of New Mexico CWA §303d/§305b Integrated Report*.

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X. DREDGE AND FILL PROGRAM

A. Description of the Dredge and Fill Program

[Required by by 40 CFR 130.6(c)(7) for WQMP]

Previous location: *WQMP p. 50.*

Significant changes: *strikes NM's certification options (certify, certify with conditions, deny) because these are established in more detail in the proposed certification regulations; adds description of additional aspects of the program.*

Minor changes: *strikes reference to the Nonpoint Source Management Plan because it provides no additional detail on the dredge and fill program.*

The U.S. Army Corps of Engineers (USACE) is responsible for issuing permits for activities involving the discharge of dredged or fill materials to waters of the U.S. pursuant to Section 404 of the CWA. NM is not delegated primacy for the issuance or enforcement of Section 404 permits, but does review the permits for purposes of state certification or denial under CWA Section 401 The WQA assigns the responsibility for certifying permits issued under the CWA to NMED (Section 74-6-4.F), and also specifies the conditions under which a certification shall be denied (Section 74-6-5.E).

In addition to the certification of permits, the Dredge and Fill Program includes consultation with applicants and USACE as needed, compliance site inspections, education, and outreach activities.

B. Process for CWA Section 401 Certification of Dredge and Fill Permits

This is a new section not previously included in the WQMP or CPP.

USACE may not issue CWA Section 404 permits for the discharge of dredged or fill materials to waters of the U.S. until the State is provided an opportunity to review and certify the permit. The WQA assigns the responsibility for certifying permits issued under the CWA to NMED (Section 74-6-4.F), and also specifies the conditions under which a certification shall be denied (Section 74-6-5.E).

Note: Inclusion of the following paragraph as drafted is contingent upon WQCC approval of certification regulations. The hearing for consideration of the proposed regulations is scheduled for January 2011.

Section 20.6.2.2002 NMAC of the *Ground and Surface Water Protection Regulations* sets forth procedures for state certification of dredge and fill permits. The procedures specify public notice requirements, a public comment period, the content and distribution of a certification or denial, timeframes, and appeal requirements.

C. Planning Strategy for the Dredge and Fill Program

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Previous location: *WQMP, p. 50.*

Significant changes: *commits to annual review of the program.*

Minor changes: *drops statement that the Nonpoint Source Management Plan is incorporated by reference because the plan provides no additional detail on the dredge and fill program and is already incorporated by reference into the WQMP/CPP.*

SWQB will review the Dredge and Fill Program annually to determine if improvements are required. SWQB will also review and certify, conditionally certify, or deny USACE individual and general permits.

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XI. BASIN PLANS

[Required by 40 CFR 130.6(c)(8) for WQMP, 40 CFR 130.5 (b)(2) for CPP]

Previous location: *WQMP p. 51.*

Significant changes: *provides more explanation of the federal requirements regarding basin plans and how NM's approach is consistent with the requirements.*

Minor changes: *expands discussion of watershed-level planning.*

A. Introduction

Basin plans were initially developed by the State for water quality planning in the early and mid 1970s. In the 1980s the State shifted to planning on a statewide basis rather than basin-by-basin. This approach is consistent with the requirements of CWA Section 208 and 40 CFR 130.5(b)(2) for an "areawide waste treatment planning process." According to 40 CFR 130.6(c)(8), a WQMP must identify "any relationship to applicable basin plans developed under Section 209" of the CWA. No such basin plans are applicable to NM.

Although the State conducts water quality planning on a statewide level, implementation and restoration efforts focus on the watershed level. A successful watershed protection approach must be founded on cooperative interaction between the federal, state, and local levels of government, and between the public and private sectors.

Throughout the state, local government organizations and citizens are working to address local water issues relating to both quantity and quality. These organizations include voluntary watershed groups, soil and water conservation districts, county and municipal governments, and concerned citizens.

B. Strategy

The WQCC will continue water quality management planning on a statewide basis via this WQMP/CPP. SWQB will work with and encourage participation by local, state and federal organizations in the development and implementation of strategies to address specific regional or watershed concerns.

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XII. GROUND WATER

[Required by 40 CFR 130.6(c)(9)]

A. Ground Water Pollution Prevention Program

Previous location: *WQMP, pp. 52-53.*

Significant changes: *adds description of discharge permitting and UIC programs.*

Minor changes: *Deletes description of database capabilities.*

The WQCC has adopted comprehensive regulations (*Ground and Surface Water Protection Regulations* 20.6.2 NMAC), including ground water quality standards and a discharge permitting program, for the protection of ground water quality under the authority of the WQA. In accordance with WQA Section 74-6-4, the WQCC has delegated responsibility for administering its regulations regarding ground water protection to NMED and OCD[12]. The WQCC reviews and changes its regulations as it deems appropriate.

GWQB reviews and approves discharge permits for discharges that have the potential to impact ground water quality. Ground water discharge permits address a wide variety of discharges including domestic wastewater treatment plants, commercial septic tank/leachfields, power generating plants, mining facilities, commercial laundries not served by sanitary sewers, dairies, food processing plants, commercial landfarms for treatment of contaminated soil, industrial discharges, injection wells and ground water remediation systems. The program also addresses unauthorized discharges such as spills; performs enforcement actions to ensure compliance with permit requirements; and requires abatement of ground water contamination related to permitted facilities. The discharge permitting process includes public notification, a public comment period and a public hearing in situations where there is substantial public interest. Permits are issued for five year terms and must be renewed to provide continuous coverage. Currently GWQB manages approximately 837 active agricultural, domestic waste, and industrial permits.

The Underground Injection Control (UIC) Program is a federal ground water protection program established by the SDWA. The purpose of the UIC Program is to prevent ground water contamination by regulating the discharge of wastes into UIC wells. NM has primacy for administration of the UIC Program, which is jointly implemented by GWQB and OCD. These programs administer the UIC Program under authority granted by the WQA, the *Ground and Surface Water Protection Regulations* (20.6.2 NMAC), the New Mexico Oil and Gas Act, and the New Mexico Geothermal Resources Act.

A UIC well is:

- Any dug hole or well that is deeper than its largest surface dimension, where the principal function of the hole is emplacement of fluids,

[12] *Delegation of Responsibilities to Environmental Improvement Division and Oil Conservation Division, July 21, 1989.*

- Any septic tank or cesspool used by generators of hazardous waste, or by owners or operators of hazardous waste management facilities, to dispose of fluids containing hazardous waste, or
- Any subsurface distribution system, cesspool or other well which is used for the injection of wastes.

EPA has grouped UIC wells into five classes (Class I, II, III, IV and V) , according to the type of fluid they inject and where the fluid is.

NM administers the federal UIC Program through the ground water discharge permits required by 20.6.2 NMAC. Facilities that discharge fluids into UIC wells are required to have ground water discharge permits approved by either GWQB or OCD, depending on the type of operation. Discharge permits contain operational, monitoring, contingency, and closure plans with specific requirements to prevent and remediate any negative impacts that UIC wells may have on ground water quality. GWQB permits and oversees the operation, monitoring, and closure of Class I, III, IV, and V wells. OCD regulates Class II wells, and also Class I, III, and V wells related to oil and gas development activities, geothermal activities, and brine solution mining.

B. Planning Strategy for Ground Water Protection

Previous location: *WQMP, p. 53.*
Significant changes: *none.*
Minor changes: *none.*

WQCC will update the *Ground and Surface Water Protection Regulations* (20.6.2 NMAC) as necessary to meet arising needs. NMED and OCD will continue to administer the state regulations for ground water protection in accordance with the WQCC's delegation of responsibilities.

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XIII. DETERMINATION OF COMPLIANCE WITH WATER QUALITY STANDARDS FOR THE PROTECTION OF HUMAN HEALTH CRITERIA

Previous location: *WQMP, pp. 54-55.*
Significant changes: *none.*
Minor changes: *none.*

A. Background

In March 2002, SWQB proposed revisions to the *Standards for Interstate and Intrastate Surface Waters* (20.6.4 NMAC) to include human health criteria. The WQCC at their regularly scheduled open meeting in May 2002 deliberated the March hearing record. Upon deliberation, the WQCC unanimously voted to substitute language in subsection D of 20.6.4.11 to read as follows:

> *Compliance with water quality standards for the protection of human health shall be determined from the analytical results of representative grab samples, as defined in the Water Quality Management Plan. Human health standards shall not be exceeded.*

The procedures and methods used in the scientific studies necessary to make compliance determinations are found in several documents developed by SWQB. These documents include the water quality standards, and the QAPP, which is reviewed and approved by EPA on an annual basis. The QAPP specifically addresses both laboratory and field procedures, including data interpretation approaches and field sampling techniques. The 2002 action by WQCC concerning human health priority toxic pollutants relies on grab sample techniques to determine standards compliance. Accordingly, specification of this technique is appropriate.

EPA guidance document entitled *NPDES Storm Water Sampling Guidance Document*[13], defines a grab sample on page 37 as "A discrete, individual sample taken within a short period of time (usually less than 15 minutes). Analysis of grab samples characterizes the quality of a storm water discharge at a given time of the discharge." This definition is operationally sufficient for both perennial and ephemeral waters. In order to address the possibility of sampling or analytical error, it is the policy of SWQB that a minimum of two such samples shall be used to determine accuracy and repeatability of sampling and analytical techniques. A grab sample shall be considered a representative grab sample when the analytical results of that sample have been confirmed as unbiased and reproducible by comparison to the analytical results of a second grab sample. Procedures used for the evaluation of quality assurance and quality control are found in the QAPP. The analytical results of that single representative sample shall be used for the determination of compliance with applicable human health criteria.

B. Process for Determination of Compliance

Sampling for determination of compliance with water quality standards human health criteria shall be accomplished as follows:

[13] EPA 833-B-92-001, July 1992

1. Perennial Waters: A minimum of three individual grab samples, separated in time by no less than 15 minutes each, shall be taken during the same sampling event from the same location. For the purpose of determining noncompliance, the analytical results of two or more of these samples must be greater than the applicable human health criteria. Results of all grab samples shall be recorded and reported.
2. Ephemeral Waters: A minimum of three individual grab samples, separated in time by no less than 15 minutes each, shall be taken during the same ephemeral flow event from the same location. For the purpose of determining noncompliance, the analytical results of 2 or more of these samples must be greater than the applicable human health criteria. Results of all grab samples shall be recorded and reported.

Sampling and analysis shall be in accordance with SWQB's current QAPP.

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XIV. PUBLIC PARTICIPATION

A. Requirements for Public Participation

Previous location: *WQMP, pp. 56-59.*

Significant changes: *updates table of requirements (changes shown in strike-through/underline.)*

Minor changes: *deletes background discussion of why public participation is important.*

This section applies to the CWA and WQA programs administered by SWQB, described herein.

General public awareness and stakeholder involvement is crucial to the successful implementation of CWA programs. By seeking and considering invaluable public input and involvement, SWQB can more effectively promote changes in behavior, and actively improve public involvement to produce both better decisions and greater public acceptance and support for these decisions.

Public participation requirements in programs administered under the CWA are specified in 40 CFR 25.4. This requires agencies to conduct a continuing program for public information and participation which includes the following provisions, at a minimum:

- provide the public with the information and assistance necessary for meaningful involvement;
- provide a central location of reports, studies, plans, and other documents;
- maintain a stakeholder list of affected/interested parties; and
- notify stakeholders in a timely fashion prior to consideration of major decisions (generally should not be less than 30 days).

While the majority of programs administered by SWQB fall under this federal regulation, some programs have additional, very detailed and specific public participation requirements. The general requirements for those programs with additional public participation elements are outlined in Table XIV-1 below, along with the associated reference.

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Table XIV-1. Public Participation Requirements

Changes are shown in underline-strikeout format to facilitate review of the draft document.

Program Element	Actions
~~CPP~~ ~~WQMP – Formal Updates~~ ~~WQMP – Administrative Updates~~ WQMP/CPP - All Updates	• Periodic review by EPA (40 CFR 130.5) [previously CPP only] • Minimum 30 day public comment period [previously CPP and WQMP Formal Updates only] ~~and opportunity to request hearing~~ [WQMP Formal Updates only] • Public meetings across state (Optional*) [previously CPP and WQMP Formal updates only] • NMED Press Release (Optional*) [previously WQMP Formal Updates only] • Posting on NMED website (Optional*) • Placement on WQCC meeting agenda • Placement of proposed update on WQCC agenda and discussion of the topic at the open WQCC meeting • Public participation at open WQCC meeting • WQCC Approval
~~Antidegradation Implementation~~	~~• Currently being drafted (CPP revised version as referenced in the Standards for Interstate and Intratstate Surface Waters, 20.6.4 NMAC)~~ ~~• NMED Press Release (Optional*)~~
Water Quality Standards & ~~WQCC~~ Ground and Surface Water Protection Regulations at 20.6.2 NMAC	• Informal public and stakeholder meetings held to gather information (Optional*) • Placement of proposed draft standards/regulations on WQCC agenda to request public hearing (NM WQA 74-6-6.A) • Hearing notice published in NM Register and one newspaper of general circulation and mailed to WQCC mailing list (NM WQA 74-6-6C) 45 days prior to hearing date; (45 day notice requirement in 40 CFR 25, 30 day notice requirement in NM WQA 74-6-6) • Hearing notice published in additional newspapers in affected area(s) and mailed to entire SWQB mailing list (Optional*) • NMED Press Release (Optional*) • Posting on NMED website (Optional*) • Public hearing before WQCC • WQCC Approval
Water Quality Surveys	• Conduct pre-monitoring public meetings prior to conducting the study to inform stakeholders in affected area about upcoming study plan, obtain contacts, and

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Program Element	Actions
	obtain watershed specific information from those living/working within the watershed (Optional*) • Conduct Public Field Demonstrations at one of the sampling locations during the middle of the study to provide the public an opportunity to observe data collection methods, ask questions, etc. (Optional*) • NMED Press Release (Optional*) • Posting on NMED website (Optional*)
TMDL Documents	• Minimum 30-day public comment period (40 CFR ~~130.36~~ 25.4) • Public meeting(s) in affected area (Optional*) • Notice of public comment period and meetings published in at least one newspaper of general circulation and newspaper(s) in affected areas and mailed to stakeholder lists (Optional*) • NMED Press Release (Optional*) • Posting on NMED website (Optional*) • Placement on WQCC agenda • Public participation at open WQCC meeting • WQCC Approval
~~*List of Impaired Waterbodies (CWA §303(d) List)*~~ State of New Mexico CWA §303(d)/§305(b) Integrated Report	• Minimum 30-day public comment period (40 CFR ~~130.36~~ 25.4) • Notice of comment period published in at least one newspaper of general circulation and newspaper(s) in affected areas and mailed to stakeholder lists (Optional*) • NMED Press Release (Optional*) • Posting on NMED website (Optional*) • Placement on WQCC agenda • WQCC Approval
Request for Proposals (RFPs)	• Published in at least 3 newspapers of general circulation within the state at least 20 days prior to the date set for receipt of proposals (1.5.2 NMAC) • NMED Press Release (Optional*) • Posting on NMED website (Optional*)

** For the purposes of this document, "Optional" is used to identify public participation actions that are not specified in any regulation but are commonly implemented by the SWQB in addition to the requirements spelled out by regulations. While all actions included in the table are usually implemented by the SWQB, on rare occasions, time and/or resources only allow the SWQB the opportunity to complete the minimum required actions. The use of the word "optional" provides the SWQB some flexibility to fulfill only the minimum requirements when all actions cannot be completed. As stated below, the SWQB will, whenever practical and possible, continue to implement both optional and required elements identified in the table above.*

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B. Planning Strategy for Fulfilling Public Participation Requirements

Previous location: *WQMP, p. 59.*
Significant changes: *none.*
Minor changes: *revised formatting.*

SWQB will satisfy public participation requirements in accordance with appropriate law/regulation/policy by:

- Providing the public with the information necessary for meaningful involvement and informing the public of how they can obtain pertinent documents/information. This information is provided in public notices, at public meetings or hearings, available upon request, or can be obtained from the SWQB website at www.nmenv.state.nm.us/swqb. Brochures, newsletters, fact sheets, press releases, and other media are also utilized, as appropriate, to provide the public with the pertinent documents/information. This information includes appropriate information and documents as well as guidelines on how public meetings or hearings will be conducted.
- Providing a central location of reports, studies, plans, and other documents. SWQB maintains an administrative record, including all study plans and associated documentation (i.e. data, field sheets, etc.). A library of all intensive water quality survey reports is maintained, and reports are available to the public upon request.
- Maintaining a stakeholder list of affected/interested parties. SWQB maintains a database of affected/interested parties. This list includes WQCC mailing list, the Nonpoint Source Task Force mailing list, environmental organizations, affected entities, and numerous individuals who sign up to receive information. SWQB staff updates the list regularly.
- Properly notifying interested parties in accordance with laws/statutes/policies of any upcoming program activities. At a minimum, SWQB publishes in the required newspapers (and register, if necessary), mails notices to interested parties list asking them to post and/or forward to other interested parties, issues an NMED press release, and posts all pertinent documents along with the public notice on SWQB's website (www.nmenv.state.nm.us/swqb).

Whenever practical and possible, SWQB will expand outreach efforts to maximize public participation by seeking out innovative ways of informing and involving the public. SWQB will provide the public with information on their role in the public participation process by documenting public input and providing a response to public input by explaining how the input was taken into consideration through the public participation process. This information is attached to final documents and provided individually to those who participated in the process.

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XV. WETLANDS PROGRAM

This is a new section not previously included in the WQMP or CPP.

A. Introduction

The SWQB Wetlands Program administers wetland restoration and program development grants received from EPA under CWA Section 104(b)(3). The overall goals of the Wetlands Program are to protect and restore NM's wetlands and riparian areas and to increase self-sustaining and naturally functioning wetlands and riparian areas. The Wetlands Program emphasizes the role of wetlands in prevention and reduction of water quality impairments and providing habitat and life requirements for wildlife.

EPA has identified four core components critical to effective, comprehensive wetland programs[14]. The components are regulatory actions, monitoring and assessment, restoration and protection, and water quality standards. A description of these components in NM's Wetlands Program follows:

1. Regulatory Controls - The State's regulatory program, which applies to all surface waters of the state including wetlands, is described in this WQMP/CPP. Specifically, NPDES permits under CWA Section 402 regulate discharges to wetlands, and the Dredge and Fill Program under CWA Section 404 regulates other activities affecting wetlands.

2. Monitoring and Assessment - The monitoring goals of the NM Wetlands Program include using existing monitoring protocols and developing new protocols as needed to verify wetland degradation, impacts and recovery; documenting wetland gains and losses; documenting results of wetlands creation, restoration and enhancement projects; and developing an inventory of wetlands resources and prioritization of wetlands projects and protection within specific watersheds. The state is in the process of incorporating wetlands monitoring and assessment into the 10-year Monitoring Strategy.

3. Restoration and Protection - Wetlands Action Plans are developed for and by watershed groups. A number of restoration projects are occurring statewide and are funded by EPA Region 6 CWA Section 104(b)(3) Program Development grants. Project activities include restoration of wet meadows and waterfowl habitat on the Rio Grande along the central flyway, restoration of bosque on private land parcels, re-establishment of natural flooding, increasing wetland plant diversity and habitat diversity, removal of exotic vegetation, restoration of springs, planning for open-space and conservation easements to protect wetlands resources including buffer zones, restoring beaver habitat, restoring high mountain fen wetlands, river restoration to address transportation maintenance issues, and conservation of playas and closed basin wetlands. The Wetlands Program maintains the NM Statewide Wetlands Roundtable consisting of state and federal agency and tribal participation. The wetland restoration/protection program also includes provisions for technical assistance to landowners or organizations carrying out wetland restoration

[14] *Core Elements of an Effective State and Tribal Wetlands Program* at http://www.epa.gov/wetlands/initiative/cef_full.html.

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projects, active research regarding effective wetland restoration techniques and methods to measure the success of restoration activities, and training and capacity building for organizations interested in joining restoration partnerships.

4. Water Quality Standards - Wetlands are explicitly included in the definition of surface waters of the state, to which NM's water quality standards apply. General criteria protect wetlands from toxic pollutants, plant nutrients, total dissolved solids, and other harmful pollutants. Designated uses and criteria – in particular, wildlife habitat and aquatic life uses – apply to unclassified wetlands, and the WQCC has the authority to classify wetlands with more specific protections. The antidegradation policy also applies to wetlands.

B. Planning Strategy

SWQB's approach to encourage wetland protection in NM is on a watershed basis. This approach involves assisting watershed groups throughout the state to develop "Wetland Action Plans" as a component of watershed-based plans
. A Wetland Action Plan is a planning document designed specifically to address wetlands and riparian resources within the boundaries of a specific watershed.

Each watershed group will assess wetlands/riparian resources in their watershed and develop proposals to protect, restore, and create wetlands locally. This project will assist watershed groups to incorporate wetlands issues into their mission and will promote stewardship of wetlands through cooperative approaches involving agencies, local governments, tribes, private/nonprofit organizations, and the public.

It is also expected to improve the effectiveness and efficiency of wetlands protection and management programs in government and the private sector. This project ultimately proposes to establish a self-sustaining mechanism for localized involvement in protection, restoration and creation of wetlands throughout NM.

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