



# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

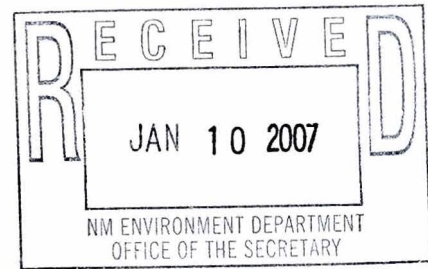
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DEC 29 2006

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JAN 10 2007

SURFACE WATER  
QUALITY BUREAU



Mr. Ron Curry  
Chairman  
Water Quality Control Commission  
Harold Runnels Building  
1190 Saint Francis Drive  
Santa Fe, NM 87502

Subject: EPA Approval of Revisions to New Mexico's Standards for Interstate and Intrastate Surface Waters, 20.6.4 NMAC

Dear Mr. Curry:

I am pleased to inform you that we have completed our review of the State's triennial revisions. As always, I thank you for the efforts of the New Mexico Water Quality Control Commission and particularly the New Mexico Environment Department in the development of these revisions.

The new and revised water quality standards include a number of important amendments. These include the development of standards for non-classified ephemeral, intermittent and perennial waters; revisions to the State's bacteriological criteria, specifying *E. coli* as the indicator organism consistent with the Environmental Protection Agency's (EPA) recommendation; revision of rules for the applicability of criteria to prevent inappropriate attainment decisions; revisions to use attainability analyses procedures; and revised classified segments. The Commission and the Environment Department should be commended for making these important revisions to New Mexico's water quality standards.

EPA's review was of amendments to the *Standards for Interstate and Intrastate Surface Waters* 20.6.4. NMAC. These revisions were adopted by the Commission and became effective as State law on May 23, 2005, with revisions effective on July 17, 2005. The amendments were certified by the Assistant Attorney General by letter dated July 1, 2005, and were submitted to EPA as required under federal regulations at 40 CFR 131.20(c). EPA received the documents on July 7, 2005.

In today's action, EPA is approving the majority of these amendments. However, based on a review of the record, EPA was unable to take action on a few provisions because they did not meet the minimum requirements for a water quality standards submission. See 40 CFR 131.6(b) and (f). Specifically, EPA was unable to take action on the limited aquatic life, aquatic life and/or secondary contact recreation use designations for Sections 20.6.4.97, 20.6.4.98 and

20.6.4.99. EPA strongly supports the concept the State has used in developing standards for unclassified ephemeral, intermittent and perennial surface waters; however, adequate supporting documentation (such as a use attainability analysis) was not available which would allow us to take action on all portions of these provisions. Similarly, EPA was unable to take action on the new and/or revised use designations and modifications for six classified segments because adequate supporting documentation (such as a use attainability analysis) was not available to support the modifications. See segments 20.6.4.126, 128, 221, 310, 701 and 702.

The enclosed detailed Record of Decision explains EPA's basis for the approval action taken and provides an explanation of the type of documentation that is necessary for EPA to be able to approve the remaining provisions. We would be glad to work with you and provide technical assistance regarding the needed supporting documentation.

It is important to note that EPA's approval of the State's water quality standards is considered a federal action which may be subject to the Section 7(a)(2) consultation requirements of the Endangered Species Act (ESA).<sup>1</sup> Section 7(a)(2) of the ESA states that "each federal agency ... shall ... insure that any action authorized, funded or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined to be critical..."

EPA's approval of the water quality standards revisions, therefore, may be subject to the results of consultation with the U.S. Fish and Wildlife Service pursuant to Section 7(a)(2) of the ESA. Nevertheless, EPA also has a Clean Water Act obligation, as a separate matter, to complete its water quality standards action. Therefore, in approving New Mexico's water quality standards revisions today, EPA is completing its CWA Section 303(c) responsibilities. However, should the consultation process with the U.S. Fish and Wildlife Service identify information that supports a conclusion that one or more of these revisions is likely to jeopardize the continued existence of any endangered or threatened species, EPA will revisit and amend its approval decision for those revised or new water quality standards.

Pursuant to the *Memorandum of Agreement Between the Environmental Protection Agency, Fish and Wildlife Service and National Marine Fisheries Service Regarding Enhanced Coordination Under the Clean Water Act and Endangered Species Act* (66FR11202, February 22, 2001), EPA Headquarters and the Services have initiated a national consultation on all of EPA's published water quality criteria for the protection of aquatic organisms. As explained in the MOA, the national consultation provides Endangered Species Act Section 7 consultation coverage for any water quality criteria included in State water quality standards, approved by EPA, that are identical to or more stringent than EPA's recommended CWA Section 304(a) criteria. EPA Region 6, therefore, will defer to the national consultation on questions of

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<sup>1</sup> Where EPA concludes that its approval action will have "no effect" on listed endangered or threatened species, or is otherwise not subject to ESA consultation, EPA can issue an unconditional approval.

protectiveness for aquatic life criteria. In the unlikely event that the national consultation discovers EPA's published CWA Section 304(a) criteria (and by extension, the State standards) are likely to cause jeopardy to listed species or the adverse modification or destruction of designated critical habitat, EPA has retained its authority to revise its approval decision.

As mentioned earlier, I appreciate both the Commission's and the Environment Department's efforts in the development of these important revisions to New Mexico's water quality standards, and commend the Commission for its action. I also appreciate the cooperative and constructive way in which the Environment Department staff has worked with my staff as it developed its proposal for this triennial review of the State's water quality standards.

If you need additional detail and if you would like to schedule a meeting to work through the issues outlined in this letter, please call me at (214) 665-7101, or have the Environment Department staff contact Russell Nelson, my Regional Water Quality Standards Coordinator, at (214) 665-6646.

Sincerely,



Miguel I. Flores, Director  
Water Quality Protection Division

Enclosure

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