



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

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OFFICE OF
WATER AND
WATERSHEDS

JUL 11 2014

Mr. Barry N. Burnell, Administrator
Water Quality Program
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706

Re: Approval of Idaho's Final 2012 Section 303(d) List

Dear Mr. Burnell:

The U.S. Environmental Protection Agency has conducted a review of Idaho's 2012 Section 303(d) List, supporting documentation and information. Based on our review of the submittal, the EPA has determined that Idaho's 2012 list of 1,011 waterbodies (as identified by assessment unit [AU]), still requiring total maximum daily loads (TMDLs), meets the requirements of Section 303(d) of the Clean Water Act (CWA) and the Agency's implementing regulations. Therefore, by this order, the EPA hereby approves Idaho's 2012 303(d) list. The statutory and regulatory requirements, and a summary of the EPA's review of Idaho's compliance with each requirement, are described in the enclosure to this letter.

The EPA has received Idaho's long-term schedule of priorities for TMDL development for all waters on the State's 2012 Section 303(d) list. As a policy matter, the Agency has requested that States provide such schedules. The EPA is not taking any action to approve or disapprove this schedule and priorities pursuant to Section 303(d).

In 1994, in response to a federal District Court order, the EPA published a 303(d) list for the State of Idaho which identified all impaired waters within the State, including some waters within Indian Country as defined at 18 USC § 1151. The Agency's approval of the State's 2012 Section 303(d) list does not apply to any waters, or portions thereof, that are within Indian Country. The EPA is taking no action to approve or disapprove the State's list with respect to any waters within Indian Country.

We would like to recognize the hard work of Nicole Deinarowicz and Michael McIntyre at IDEQ in developing the final 2012 Section 303(d) List. We appreciate their communication with the EPA throughout the listing cycle and their dedication in working through many difficult issues. We look forward to this continued coordination in the future.

If you have any questions, please contact Jill Fullagar, Impaired Waters Program Coordinator, at (206) 553-2582, or Dave Croxton, Manager, Watershed Unit, at (206) 553-6694.

Sincerely,

A handwritten signature in blue ink that reads "Christine" followed by a stylized signature.

Daniel D. Opalski, Director
Office of Water and Watersheds

Enclosure

cc: Mr. Michael McIntyre, Surface Water Manager, IDEQ (electronic)

STATUTORY AND REGULATORY BACKGROUND

Purpose

The purpose of this document is to describe the EPA's rationale for approving Idaho's 2012 Clean Water Act (CWA) Section 303(d) list of water quality limited segments. The following sections identify those elements to be included in the list submittal based on the CWA and the EPA regulations (see 40 CFR 130.7.) The EPA reviewed methodology used by the State in developing its list and the description of the data and information it considered. The EPA's review of Idaho's list is based on the EPA's analysis of whether the State reasonably considered existing and readily available water quality data and information and reasonably identified waters required to be listed. This review describes the basis for the EPA's decision to approve the State's listings of water quality limited segments (WQLS) requiring a Total Maximum Daily Load (TMDL) identified in the State's 2012 Integrated Report.

Integrated Report

Within the Integrated Report, Idaho places all state water bodies into at least one of five different categories, based on attainment of water quality standards (WQS) and beneficial use support:

- **Category 1** waters are wholly within a designated wilderness or inventoried roadless area and presumed to be fully supporting all beneficial uses.
- **Category 2** waters are fully supporting those beneficial uses that have been assessed. The use attainment of the remaining beneficial uses has not been determined due to insufficient data (or no data) and information.
- **Category 3** waters have insufficient data (or no data) and information to determine if beneficial uses are being attained.
- **Category 4** waters do not support one or more beneficial uses, but they do not require the development of a TMDL. Category 4 has three subcategories:
 - **Category 4a** waters have had a TMDL completed and approved by EPA.
 - **Category 4b** waters have had pollution control requirements other than a TMDL placed on them, and these waters are reasonably expected to attain the water quality standard within a reasonable period of time.
 - **Category 4c** waters are those failing to meet applicable water quality standards due to other types of pollution (e.g., flow alteration), not a pollutant.
- **Category 5** waters do not meet applicable water quality standards for one or more beneficial uses due to one or more pollutants; therefore, an EPA-approved TMDL is needed. Category 5 water bodies make up the §303(d) list of impaired waters.

The term "303(d) list" is short for Category 5, the list of impaired and threatened waters (stream/river segments, lakes) that the Clean Water Act requires all states to submit for EPA approval every two years in even-numbered years. The states identify all waters where required pollution controls are not sufficient to attain or maintain applicable water quality standards, and

establish priorities for development of TMDLs based on the severity of the pollution and the sensitivity of the uses to be made of the waters, among other factors (40C.F.R. §130.7(b)(4)). States then provide a long-term plan for completing TMDLs within 8 to 13 years from first listing.

EPA policy allows states to remove waterbody segments from the list, or delist them, after they have developed a TMDL or after other changes to correct water quality problems have been made. For example, once a TMDL has been approved, the waters are moved from Category 5 to Category 4a. If a TMDL alternative plan has been developed and approved, the segment is moved into Category 4b. If WQS are attained and beneficial uses are supported, the waters are moved to Category 2. Occasionally, a waterbody can be taken off the list as a result of a change in water quality standards or removal of designated uses; however, designated uses cannot be deemed unattainable and removed until a thorough analysis clearly shows that they cannot be attained.

In addition to the 303(d) report, the CWA requires that each state report every two years on the health of *all* its waters, not just those that are impaired. Information from this report, known as the 305(b) report or "biennial water quality report," has historically been used to develop the "threatened and impaired waters" list. Most states compile the data and findings from the 305(b) report and add information from other sources, such as the state's report of waters affected by nonpoint sources (CWA §319), to produce the 303(d) list. EPA recommends that states combine the threatened and impaired waters list, 303(d) report, with the 305(b) report to create an "Integrated Report," due April 1 of even-numbered years.

I. Identification of WQLS for Inclusion on Section 303(d) List

Section 303(d)(1) of the CWA directs States to identify those waters within its jurisdiction for which effluent limitations required by Section 301(b)(1)(A) and (B) are not stringent enough to achieve any applicable water quality standard, and to establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters. The Section 303(d) listing requirement applies to waters impaired by point and/or nonpoint sources, pursuant to the EPA's long-standing interpretation of Section 303(d).

The EPA regulations provide that States do not need to list waters where the following controls are adequate to implement applicable water quality standards: (1) technology-based effluent limitations required by the Act, (2) more stringent effluent limitations required by State or local authority, and (3) other pollution control requirements required by State, local, or federal authority. See 40 CFR 130.7(b)(1).

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

In developing Section 303(d) lists, States are required to assemble and evaluate all existing and readily available water quality-related data and information, including, at a minimum, consideration of existing and readily available data and information about the following categories of waters: (1) waters identified as partially meeting or not meeting designated uses, or

as threatened, in the State's most recent Section 305(b) report; (2) waters for which dilution calculations or predictive modeling indicate nonattainment of applicable standards; (3) waters for which water quality problems have been reported by governmental agencies, members of the public, or academic institutions; and (4) waters identified as impaired or threatened in any Section 319 nonpoint assessment submitted to the EPA. See 40 CFR 130.7(b)(5). In addition to these minimum categories, States are required to consider any other data and information that is existing and readily available. The EPA's 1991 *Guidance for Water Quality-Based Decisions* describes categories of water quality-related data and information that may be existing and readily available. (EPA, 1991) While States are required to evaluate all existing and readily available water quality-related data and information, States may decide to rely or not rely on particular data or information in determining whether to list particular waters.

In addition to requiring States to assemble and evaluate all existing and readily available water quality-related data and information, the EPA regulations at 40 CFR 130.7(b)(6) require States to include as part of their submissions to the EPA documentation to support decisions to rely or not rely on particular data and information and decisions to list or not list waters. Such documentation needs to include, at a minimum, the following information: (1) a description of the methodology used to develop the list; (2) a description of the data and information used to identify waters; and (3) any other reasonable information requested by the EPA.

III. Priority Ranking

The EPA regulations also codify and interpret the requirement in Section 303(d)(1)(A) of the Act that States establish a priority ranking for listed waters. The regulations at 40 CFR 130.7(b)(4) require States to prioritize waters on their Section 303(d) lists for TMDL development, and also to identify those WQLS targeted for TMDL development within the next two years. In prioritizing and targeting waters, States must, at a minimum, take into account the severity of the pollution and the uses to be made of such waters. States may consider other factors relevant to prioritizing waters for TMDL development, including immediate programmatic needs, vulnerability of particular waters as aquatic habitats, recreational, economic, and aesthetic importance of particular waters, degree of public interest and support, and State or national policies and priorities.

IV. Public Participation Process

The process for identifying water quality limited segments requires the involvement of the general public commonly referred to as the public participation process. The public participation process is intended to foster public awareness and open processes of government decision making. See 40 CFR § 25.1 (a). At a minimum, the public participation process must provide, encourage and assist the participation of the public or segments of the public which may have a particular interest in a given program or decision. See 40 CFR § 25.3(a) and § 25.4(b)(5). The public notification must be provided far enough in advance of agency action to permit time for public response which in general should not be less than 30 days. See 40 CFR § 25.4(c).

ANALYSIS OF IDAHO'S SUBMISSION

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

The EPA has reviewed Idaho's submission, and has concluded that the State developed its Section 303(d) list in compliance with Section 303(d) of the Act and 40 CFR 130.7. The EPA's review is based on its analysis of whether the State reasonably considered existing and readily available water quality-related data and information and reasonably identified waters required to be listed.

A. Idaho's List Development and Public Process

Idaho's 2010 303(d) list was used as the starting point for developing the 2012 303(d) list. IDEQ actively sought data collected by federal agencies, other state agencies, tribes, local governments, watershed councils and private and public organizations and individuals. A 60-day call for data began in December, 2011.

After the call for data, IDEQ evaluated the data and prepared a statewide assessment. IDEQ prepared a draft list of impaired waters using data they collected and data received during the public processes that met QA/QC criteria and were consistent with Idaho's listing methodology.

The draft 2012 IR and list of water quality limited waters were presented for public comment from June 10 to August 9, 2014. IDEQ received 13 sets of comments, to which it responded in Appendix R of the Integrated Report.

IDEQ submitted the final 2012 Integrated Report to EPA on January 28, 2014. An amendment, correcting a clerical error, was received by EPA on May 7, 2014.

B. Listing Methodology

The State's list submittal package references the listing methodology used by IDEQ to develop the 2012 list. The State listing methodology contains a standardized approach for developing the State's Section 303(d) list and is found in the document entitled *Water Body Assessment Guidance II (WBAG II.)* (Grafe *et al.*, 2002)

The State used the assignment of assessment category decision factors identified in the methodology document as the basis for the listing decisions made on the data reviewed for the 2012 303(d) list. The EPA reviewed the various assessments and concludes the State's assessments are consistent with federal listing requirements and applicable water quality standards.

C. The EPA's Review Process

The EPA reviewed all of the documentation that Idaho submitted on January 28, 2014. The EPA reviewed the waters in Category 5 in 2010 and the category in which they were found in 2012. The EPA identified 51 new Category 5 listings in 2012. This includes 34 listings based on new readily available data, 5 due to errors in previous cycles, 5 that were delisted for fecal coliform and listed for *E. coli* due to a water quality standards change, and 5 new listings caused by creating a new assessment unit (AU). IDEQ provided the EPA with spreadsheets which summarized changes to Categories 5, 4a and 4b. The basis and rationale for each of these changes were reviewed by the EPA.

The EPA reviewed both the waters that were added to the 303(d) list and the waters that were removed from the 303(d) list (discussed in more detail below.) The EPA extensively reviewed Idaho's draft and final 2012 303(d) lists, listing methodology and priority ranking, as well as the data solicitation and public participation processes. IDEQ has provided descriptions of the data and information considered.

The EPA concludes that the State properly assembled and reasonably evaluated all existing and readily available data and information, including data and information relating to the categories of waters specified in 40 CFR 130.7(b)(5). The State provided to the EPA its rationale for not relying on particular existing and readily available water quality-related data and information as a basis for listing waters.

II. Waters not listed in Category 5

A. Waters not required to be listed

1. Waters Not Listed Due to Water Quality Standards (WQS) Attainment. IDEQ removed 95 waterbody segment/pollutant pairs from Category 5 (i.e. 303(d) list) because information shows they are meeting standards. Eight of these delistings were due to restoration activities; 24 were the result of a change in the applicable WQS; 13 were because of a change in assessment methodology, 48 were listed incorrectly; and for 2, the reason for recovery was unknown. The EPA believes IDEQ removed these waterbody segments/pollutant pairs from Idaho's Section 303(d) list in compliance with Section 303(d) of the Act and 40 CFR 130.7 and in a manner consistent with IDEQ's listing methodology. The EPA concludes IDEQ reasonably considered existing and readily available water quality-related data and information and reasonably identified waterbody segments to be removed from the list because data showed water quality standards were being met. The EPA has determined the removal of these water segments is consistent with 40 CFR 130.7(b)(6).
2. Waters Not Listed Due to TMDLs Approved. IDEQ removed 220 waterbodies paired with a pollutant from Category 5 based on the EPA approval of TMDLs for these waterbody/pollutant combinations. These 220 water body/pollutant pairs were placed in Category 4a, TMDL Approved, of the 2012 Integrated Report. In addition, TMDLs for another 60 waterbody pollutant pairs were approved and placed in Category 4a, although

these were not previously listed in Category 5. Under the EPA regulations at 40 CFR 130.7, the 303(d) list is an inventory of waterbodies impaired by a pollutant and requiring a TMDL. The EPA has determined that IDEQ's removal from the 303(d) list of 220 water segments with an EPA approved TMDL is consistent with the requirements of 40 CFR 130.7.

3. Waters removed from the 303(d) list due to Flaws in the Original Analysis. IDEQ removed 148 waters from Category 5 and placed them in Category 3 due to flaws in the original analysis. The original basis for listing was incorrect, and currently data and/or information are lacking to determine the water quality status. Consistent with 40 CFR 130.7(b)(6)(iv), the Agency concluded the IDEQ provided "good cause" for the decisions to remove these 148 waterbody pollutant combinations because the original basis for listing was incorrect. These removed waters are separate and distinct from the waters discussed in Section II.A.1, which are attaining WQS.
4. Waters in Category 4b. IDEQ has placed four AUs in Category 4b (ID17060205SL012_02a, ID17060205SL012_05, ID17060205SL013_03, ID17060205SL013_04.) Fifty-one miles of stream are addressed in the *Bear Valley Creek 4b Justification*. IDEQ will ensure that progress toward the attainment of water quality standards and beneficial use support continues with each listing cycle. If IDEQ or EPA determine that such progress is not being made in future listing cycles, the AUs will be returned to Category 5.

B. Summary of Waters Removed from Idaho's 303(d) list

The State has demonstrated good cause for not including 463 previously listed water body segment/pollutant pairs on its 2012 303(d) list, as discussed in Section II.A. 1-4 above. As provided in 40 CFR 130.7(b)(6)(iv), the EPA requested that the State demonstrate good cause for not including these waters. IDEQ has provided sufficient justification and documentation for each of these delistings in their submission to the EPA.

III. Priority Ranking

The EPA also reviewed the State's priority ranking of listed waters for TMDL development as per 40 CFR 130.7(b)(4), which says the State, "shall include a priority ranking for all listed water quality limited segments still requiring TMDL," and concludes that the State properly took into account the severity of pollution and the uses to be made of such waters. The EPA reviewed the State's identification of WQLS targeted for TMDL development in the next two years, and concludes that the targeted waters are appropriate for TMDL development in this period.