



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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March 8, 2022

Ref: 8WD-CWB

SENT VIA EMAIL

Jodi Gardberg, Manager
Watershed Protection Section
Utah Division of Water Quality
Department of Environmental Quality
jgardberg@utah.gov

Re: Clean Water Act Section 303(d) Total Maximum Daily Load (TMDL) Waterbody List

Dear Ms. Gardberg:

Thank you for your submittal of the Utah Division of Water Quality (DWQ) 2022 Integrated Report received February 14, 2022. The Environmental Protection Agency Region 8 (EPA) has conducted a complete review of the Clean Water Act (CWA) Section 303(d) waterbody list (Section 303(d) list) and supporting documentation and information. EPA has determined that Utah's 2022 CWA Section 303(d) list meets the requirements of Section 303(d) of the Clean Water Act (CWA) and EPA's implementing regulations found at 40 C.F.R. Part 130 and approves Utah's 2022 CWA Section 303(d) list.

EPA's approval of Utah's submitted Section 303(d) list does not extend to Indian country as defined in 18 U.S.C. Section 1151. Indian country in Utah generally includes (1) lands within the exterior boundaries of the following Indian reservations located within Utah, in part or in full: the Goshute Reservation, the Navajo Indian Reservation, the reservation lands of the Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes), the Skull Valley Indian Reservation, the Uintah and Ouray Reservation (subject to federal court decisions removing certain lands from Indian country status within the Uintah and Ouray Reservation), and the Washakie Reservation; (2) any land held in trust by the United States for an Indian tribe; and (3) any other areas that are "Indian country" within the meaning of 18 U.S.C. Section 1151. Today's action is not intended as an action to approve or disapprove the impaired waters list for waters within Indian country. EPA, or eligible Indian tribes, as appropriate, retain responsibilities under CWA § 303(d) for waters in Indian country.

The attachment describes the statutory and regulatory requirements of the CWA Section 303(d) list and a summary of EPA's review of Utah's compliance with each requirement. EPA appreciates your work to produce Utah's 2022 CWA Section 303(d) list.

If you have any questions, the most knowledgeable EPA staff person is Shera Reems and she may be reached at (303) 312-6888 or reems.shera@epa.gov.

Sincerely,

Judy Bloom, Manager
Clean Water Branch

Attachment

cc:

Shera Reems, EPA
Andrew Todd, EPA
Tina Laidlaw, EPA
George Parrish, EPA
Elise Hinman, UDWQ
Christine Osborne, UDWQ
Jake Vanderlaan, UDWQ

Review of Utah's 2022 Section 303(d) Waterbody List

Attachment to letter from Judy Bloom, Branch Chief, Clean Water Branch, Water Division, US EPA, Region 8 to Jodi Gardberg, Manager, Watershed Protection Section, Department of Environmental Quality, Division of Water Quality

Date of Submission to and Receipt by EPA State:

February 14, 2022

I. Introduction

The Utah Department of Environmental Quality (UDWQ), Division of Water Quality (DWQ) submitted its final 2022 Integrated Report (IR) to the Environmental Protection Agency (EPA) on February 14, 2022. Based on our review of the State's Clean Water Act (CWA) Section 303(d) water body list ("Section 303(d) list"), EPA is approving Utah's 2022 Section 303(d) list in its entirety. The purpose of this review document is to describe the rationale for EPA's approval.

EPA's approval of Utah's submitted Section 303(d) list does not extend to Indian country as defined in 18 U.S.C. Section 1151. Indian country in Utah generally includes (1) lands within the exterior boundaries of the following Indian reservations located within Utah, in part or in full: the Goshute Reservation, the Navajo Indian Reservation, the reservation lands of the Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes), the Skull Valley Indian Reservation, the Uintah and Ouray Reservation (subject to federal court decisions removing certain lands from Indian country status within the Uintah and Ouray Reservation), and the Washakie Reservation; (2) any land held in trust by the United States for an Indian tribe; and (3) any other areas that are "Indian country" within the meaning of 18 U.S.C. Section 1151. Today's action is not intended as an action to approve or disapprove the impaired waters list for waters within Indian country. EPA, or eligible Indian tribes, as appropriate, retain responsibilities under CWA § 303(d) for waters in Indian country.

In July 2005, EPA issued guidance for integrating the development and submission of 2006 CWA Section 305(b) water quality reports and CWA Section 303(d) lists of impaired waters¹. This guidance, and subsequent EPA guidance, recommends that States develop an Integrated Report of the quality of their waters by placing all waters into one of five assessment categories. By following this guidance, Category 5 of the Integrated Report is the State's CWA Section 303(d) list. EPA's action in review and approval of this document is only on Category 5 that comprises the CWA Section 303(d) list within the Integrated Report.

EPA reviewed the methodology used by the State in developing the CWA Section 303(d) list and the State's description of the data and information it considered. EPA's review of Utah's 2022 CWA Section 303(d) list is based on EPA's 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.

Utah's 2022 list is considered an update of the State's 2018/2020 list (approved 08/09/2021), and as such, the CWA Section 303(d) list EPA is approving today is comprised of 367 assessment units (685 waterbody/pollutant combinations). States may add and take waters off their CWA Section 303(d) lists based on several factors. For the 2022 cycle, Utah removed 71 waterbody/pollutant combinations from its year 2018/2020 list.

¹ <https://www.epa.gov/sites/production/files/2015-10/documents/2006irg-report.pdf>

II. Statutory and Regulatory Background

A. Identification of Water Quality Limited Segments (WQLSs) 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 CWA Section 301(b)(1)(A) and (B) are not stringent enough to implement any applicable water quality standard, and to establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters. The CWA Section 303(d) listing requirement applies to waters impaired by point and/or nonpoint sources, pursuant to EPA's long-standing interpretation of CWA Section 303(d).

EPA regulations implementing CWA Section 303(d) require States to identify water quality limited segments (WQLSs) that need total maximum daily loads (TMDL). 40 C.F.R. § 130.7(b). WQLSs² are defined in regulation as segments “where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of the technology-based effluent limitations required by sections 301(b) and 306 of the Act.” 40 C.F.R. § 130.2(j). Thus, States do not need to list waters where the following controls are adequate to implement applicable standards: (1) technology-based effluent limitations required by the CWA; (2) more stringent effluent limitations required by State or local authority; and (3) other pollution control requirements required by State, local, or federal authority. (40 C.F.R. § 130.7(b)(1).)

B. Existing and Readily Available Water Quality-Related Data and Information

In developing CWA 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, for the following categories of waters: (1) waters identified as not meeting designated uses, or as threatened, in the State's most recent CWA 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 CWA Section 319 nonpoint assessment submitted to EPA. (40 C.F.R. § 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. EPA's Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act³ describes categories of water quality-related data and information that may be existing and readily available. While States are required to evaluate all existing and readily available water quality-related data and information, States may decide to rely or not rely on particular data or information in determining whether to list particular waters.

In addition to requiring States to assemble and evaluate all existing and readily available water quality-related data and information, EPA regulations at 40 C.F.R. § 130.7(b)(6) require States to include, as part of their submissions to EPA, documentation to support decisions using or excluding 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; (3) a rationale for any decision not to use any existing and

² WQLSs may also be referred to as “impaired waterbodies” or “impairments” throughout this document.

³ Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act. Pages 30-32. <https://www.epa.gov/sites/production/files/2015-10/documents/2006irg-report.pdf>.

readily available data and information 40 C.F.R. § 130.7(b)(5), and (4) any other reasonable information requested by the Region.

C. Priority Ranking

EPA regulations also codify and interpret the requirement in CWA Section 303(d)(1)(A) of the CWA that States establish a priority ranking for listed waters. The regulations at 40 C.F.R. § 130.7(b)(4) require States to prioritize waters on their CWA Section 303(d) lists for TMDL development, and also to identify those WQLSs targeted for TMDL development in the next two years. In prioritizing and targeting waters, States must, at a minimum, consider the severity of the pollution and the uses to be made of such waters. (CWA Section 303(d)(1)(A)). As long as these factors are taken into account, the CWA provides that States establish priorities. States may consider other factors relevant to prioritizing waters for TMDL development, including immediate programmatic needs such as wasteload allocations for permits, vulnerability of particular waters as aquatic habitats, recreational, economic, and aesthetic importance of particular waters, degree of public interest and support, and State or national policies and priorities. (See 57 Fed. Reg. 33040, 33045 (July 24, 1992), and EPA's 1991 Guidance).

D. Applicable Water Quality Standards

For purposes of identifying waters for the CWA Section 303(d) list, the terms “water quality standard applicable to such waters” and “applicable water quality standards” refer to those water quality standards established under Section 303 of the Act. On April 27, 2000, EPA promulgated a rule under which the “applicable standard” for Clean Water Act purposes depends on when the relevant States or authorized Tribes promulgated that standard. Standards that States or authorized Tribes have promulgated before May 30, 2000 are effective upon promulgation by the States or authorized Tribes. Standards that States or authorized Tribes promulgated on or after May 30, 2000 become effective only upon EPA approval. 40 C.F.R § 131.21(c). EPA interprets CWA Section 303(d) to require EPA establishment or approval of CWA Section 303(d) lists only for impairments of waters with Federally-approved water quality standards.

III. Analysis of Utah’s Submission

A. Background

In reviewing Utah’s submittal, EPA first reviewed the methodology used by the State to develop its 2022 CWA Section 303(d) list considering Utah’s approved water quality standards, and then reviewed the actual list of waters. The State’s Assessment Methodology was provided as a stand-alone document. EPA has reviewed the State's submission and determined that the State developed its CWA Section 303(d) list in compliance with Section 303(d) of the CWA and 40 C.F.R. § 130.7. EPA's review is based on its analysis of whether the State reasonably considered existing and readily available water quality-related data and information and reasonably identified waters required to be listed. Utah considered all data and information pertaining to the categories under 40 C.F.R. § 130.7(b)(5), and properly listed WQLSs under 40 C.F.R. § 130.7(b)(1).

In previous guidance, EPA recommended that States develop an Integrated Report of the quality of their waters by placing all waters into one of five assessment categories. (See EPA’s Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act, July 29, 2005.)⁴ By following this guidance, Category 5 of the Integrated Report is the State’s

⁴ <https://www.epa.gov/sites/production/files/2015-10/documents/2006irg-report.pdf>

CWA Section 303(d) list. EPA's action in review and approval of this document is only with regards to Category 5, which comprises the CWA Section 303(d) list within the Integrated Report.

The State's CWA Section 303(d) list, 2022 Integrated Report, CWA Section 303(d) Listing Methodology, and geospatial coverage of assessment units was submitted electronically through ATTAINS to EPA Region 8. Email correspondence to Shera Reems, EPA Region 8, confirming the electronic submission was submitted on February 14, 2022 was received from Elise Hinman, Integrated Report Coordinator, Utah DWQ.

The year 2022 Integrated Report submitted to EPA from Utah DWQ consisted of the following portions that are necessary for the CWA Section 303(d) waterbody list:

- Waterbodies and corresponding pollutants that make up the State's Section 303(d) list (See Chapter 2: Assessments Specific to Lakes, Reservoirs, and Ponds, Pages 96 to 101 and Chapter 3: Assessments Specific to Rivers, Streams, and Canals, Pages 103 to 129).
- Prioritization of waterbodies for TMDL development (See Chapter 2: Assessments Specific to Lakes, Reservoirs, and Ponds, Pages 96 to 101 and Chapter 3: Assessments Specific to Rivers, Streams, and Canals, Pages 103 to 129).
- Identification of waters targeted for TMDL development over the next biennium (See Appendix 7, Page 160).

EPA's approval action of Utah's year 2022 CWA Section 303(d) list extends only to the items listed immediately above.

The 2022 CWA Section 303(d) waters are found in the State's Integrated Report Chapters 2 and 3. These chapters contain the following information for each waterbody: watershed management unit, assessment unit identifier, assessment unit name, water size, assessment unit category, category description, water quality parameter, parameter status, 303(d) status, use(s), cycle first listed, and 303(d) priority.

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

EPA has reviewed Utah's description of the data and information it evaluated for identifying waters on the CWA Section 303(d) list. EPA concludes that the State properly assembled and evaluated all existing and readily available data and information, including data and information relating to the categories of waters specified in 40 C.F.R. § 130.7(b)(5) and properly identified and listed WQLSs as required by 40 C.F.R. § 130.7(b)(1). In particular, the State relied on information from the 2022 CWA Section 305(b) water quality assessments, assessments performed under the CWA Section 319 non-point source program, as well as data and information obtained through an extensive process to solicit information from State, federal and citizen sources. The State's evaluation of data and information in each of these categories is described below.

- *Waters identified by the State in its most recent section 305(b) report as "partially meeting" or "not meeting" designated uses or as "threatened"* (40 C.F.R. § 130.7(b)(5)(i)): Utah produced a 2022 Integrated Report consistent with EPA's guidance regarding combined CWA Section 305(b) reports and 303(d) lists. EPA concludes that Utah made listing decisions using all existing and readily available data and information in development of its 2022 CWA Section 303(d) waterbody list.
- *Waters for which dilution calculations or predictive models indicate non-attainment of applicable water quality standards* (40 C.F.R. § 130.7(b)(5)(ii)): Utah assembled and evaluated information

from past and anticipated dilution calculations and predictive modeling. EPA concludes that Utah properly considered waters for which dilution calculations or predictive models indicate nonattainment of applicable water quality standards in development of its 2022 CWA Section 303(d) waterbody list.

- *Waters for which water quality problems have been reported by local, State, or federal agencies; members of the public; or academic institutions* (40 C.F.R. § 130.7(b)(5)(iii)): The State solicited data and information in preparation for the 2022 Section CWA 303(d) list. Data and information obtained as a result of this effort were evaluated and considered. The State’s submittal identified several entities that contributed data or information and responded to public comments related to assessments for individual waterbodies.
- *Waters identified by the State as impaired or threatened in a nonpoint assessment submitted to EPA under Section 319 of the CWA or in any updates of the assessment* (40 C.F.R. § 130.7(b)(5)(iv)): The State’s 2022 CWA Section 303(d) list includes all waters that have data to support nonpoint source pollution impairment. Utah’s listing approach and methodologies direct CWA Section 319 activities and resources to the highest priorities. Watershed assessments are often conducted for waterbodies that are already listed in order to collect current data to support TMDL development.

Based upon its review, EPA concludes that, with regard to the waters identified in the State’s 2022 CWA Section 303(d) list, the State’s process for developing that list meets the requirements of 40 C.F.R. § 130.7(b)(5)(i-iv) regarding the consideration of all existing and readily available water quality-related data and information, as well as the requirements of 40 C.F.R. § 130.7(b)(1).

C. Waters Removed from the CWA Section 303(d) List

In addition to adding WQLSs that require TMDLs to its CWA Section 303(d) list, a State may also remove waters from its list when such removal is justified. EPA has identified four reasons that justify the removal of a water from a State’s CWA Section 303(d) list⁵. These are:

1. The State has prepared and EPA has approved a TMDL for the listed water.
2. The original basis for listing the water was incorrect.
3. New data or information indicates that the applicable water quality standard for the water is being met and its designated uses are fully supported.
4. The State has adopted and EPA has approved a site-specific water quality standard for the water, and the new water quality standard is being met.

A full accounting of waters removed from the State’s 2018/2020 CWA Section 303(d) list is provided on Pages 102 in Chapter 2 and Pages 130 to 133 in Chapter 3 of the Integrated Report. The States removal decisions and stated justifications are summarized below:

Number of Waterbody-Pollutant Combinations Removed from List	
Reason	Waterbody/Pollutant Combinations
Applicable WQS attained, based on new data	50
Applicable WQS attained, original basis for listing incorrect	10

⁵ <https://www.epa.gov/sites/production/files/2015-10/documents/2006irg-report.pdf>

Applicable WQS attained, due to restoration activities	5
TMDL Approved or established by EPA (4a)	2
Applicable WQS attained, due to change in WQS	3
Data and/or information lacking to determine WQ status; original basis for listing was incorrect	1
Total	71

In reviewing the State’s 2022 CWA Section 303(d) waterbody list, EPA carefully considered Utah’s decision to remove certain waterbody-pollutant combinations from the State’s 2018/2020 CWA Section 303(d) list, its justification for those removals, and the methodology it used in making those decisions. EPA concludes that the removal decisions identified in the Integrated Report are based on all existing and readily available water quality-related data and information, and that the removal decisions are properly justified.

D. Priority Ranking and Schedule for Development of TMDLS for Listed Waters and Pollutants

Pursuant to the State’s 2022 CWA Integrated Report, the State outlined its TMDL Prioritization Process in Appendix 7 on Page 160. The State prioritizes impairments based on human and ecological health, which translate into the protection and restoration of waters designated for culinary, recreational, and aquatic life uses. The State also considers the level of partner agency and stakeholder involvement and potential for restoration as defined by the Recovery Potential Screening Tool. Other factors considered include: programmatic needs such as permitting and addressing watershed-wide water quality issues.

EPA reviewed the State's priority ranking of listed waters for TMDL development, and EPA concluded that the State properly took into account the severity of pollution and the uses to be made of such waters, as required by 40 C.F.R. § 130.7(b)(4), as well as other relevant factors such as imminent human health problems or local support for water quality improvement. In addition, EPA concluded that the priority ranking shall specifically include the identification of waters targeted for TMDL development in the next two years, as required by 40 C.F.R. § 130.7(b)(4).

IV. Final Recommendation on Utah’s 2022 CWA Section 303(d) List Submittal

After careful review of Utah’s final CWA Section 303(d) list submittal package, EPA has determined that Utah’s 2022 CWA Section 303(d) list meets the requirements of Section 303(d) of the CWA and EPA's implementing regulations and approves Utah’s 2022 Section 303(d) list.

V. References

The following list includes documents that were used directly or indirectly as a basis for EPA's review and approval of the State's CWA Section 303(d) waterbody list. This list is not meant to be an exhaustive list of all records, but to provide the primary documents the Region relied upon in making its decisions to approve the State's list.

40 C.F.R. Part 130 Water Quality Planning and Management

40 C.F.R. Part 131 Water Quality Standards

July 29, 2005, Memorandum from Diane Regas, Director, Office of Wetlands, Oceans, and Watersheds, US EPA to Water Division Directors transmitting EPA's "Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act"

October 12, 2006, Memorandum from Diane Regas, Director, Office of Oceans, Wetlands, and Watersheds entitled *Information Concerning 2008 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions*.

May 5, 2009, Memorandum from Suzanne Schwartz, Acting Director, Office of Wetlands, Oceans, and Watersheds, entitled *Information Concerning 2010 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions*.

March 21, 2011, Memorandum from Denise Keehner, Director, Office of Wetlands, Oceans, and Watersheds, entitled *Information Concerning 2012 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions*.

April 1991, "Guidance for Water Quality-Based Decisions: The TMDL Process," EPA 440/4-91-001.

July 24, 1992, Federal Register Notice, *40 C.F.R. Parts 122, 123, 130, Revision of Regulation*, 57 Fed. Reg. 33040 (July 24, 1992).

August 8, 1997, Memorandum from Robert Perciasepe, Assistant Administrator for Water, US EPA, regarding "New Policies for Establishing and Implementing TMDLs."

September 1997, Guidance from Office of Water, Headquarters, US EPA regarding "Guidelines for Preparation of the Comprehensive State Water Quality Assessments (305(b) Reports) and Electronic Updates" Supplement, EPA-841-B-97-002B.

November 5, 1997, Memorandum from Tudor Davies, Director, Office of Science and Technology to Water Management Division Directors entitled "Establishing Site Specific Aquatic Life Criteria Equal to Natural Background."

August 23, 1999, Federal Register Notice. *Proposed Revisions to the Water Quality Management and Planning Regulations*, 64 Fed. Reg. 46012 (Aug. 23, 1999).

April 27, 2000, Federal Register Notice, *EPA Review and Approval of State and Tribal Water Quality Standards*, 65 Fed. Reg. 24641 (April 27, 2000).

September 3, 2013, US EPA Memorandum, Information Concerning 2014 Clean Water Act 303(d), 305(b) and 314 Integrated Reporting and Listing Decisions.

August 13, 2015, US EPA Memorandum, Information Concerning 2016 Clean Water Act Sections 303(d), 305(b) and 314 Integrated Reporting and Listing Decisions.

December 22, 2017, USEPA Memorandum, Information Concerning 2018 Clean Water Act Sections 303(d), 305(b) and 314 Integrated Reporting and Listing Decisions.

August 9, 2021, EPA Action on Utah's 2018/2020 Clean Water Act Section 303(d) Waterbody List.

December 3, 2021, EPA comments on Utah Department of Environmental Quality proposed 2022 303(d) list.

February 14, 2022, Utah Department of Environmental Quality, Division of Water Quality, Final 2022 Integrated Report on Water Quality.