



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
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MAY 18 2015

SW
Ms. Shellie Chard-McClary
Director, Water Quality Division
Oklahoma Department of Environmental Quality
P.O. Box 1677
Oklahoma City, OK 73101-1677

RECEIVED

MAY 22 2015

WATER QUALITY DIVISION

Re: EPA Action on the Oklahoma 2014 Clean Water Act Section 303(d) List

Dear Ms. Chard-McClary:

Thank you for your April 13, 2015, submission of Oklahoma's 2014 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Report and list of water quality limited segments. The Environmental Protection Agency (EPA) reviewed the submission and supporting documentation and determined that the 2014 Section 303(d) list meets the requirements of the Clean Water Act and EPA's implementing regulations. By this action, EPA approves the state's 2014 Section 303(d) list of water quality segments and associated pollutants still needing total maximum daily loads (TMDLs) and the associated priority rankings for development of TMDLs.

EPA previously took no action on the state's omission of three waters from the 2012 Section 303(d) list. The State elected to not place Lee Creek, Little Lee Creek, and Little River (Mountain Fork) on the 2012 Section 303(d) list for total phosphorus. EPA remains concerned about the possible incongruity between the state's water quality standards and its assessment protocols for the evaluation of total phosphorus data in waters designated as "Scenic Rivers." However, EPA Region 6 staff have become aware of a statistical study being conducted by EPA's Office of Science and Technology (OST) and Office of Wetlands, Oceans and Watersheds (OWOW) to study a similar issue identified by states attempting to implement the recently released recreational water quality criteria whose duration and frequency components mirror those for total phosphorus in the state of Oklahoma's water quality standards. EPA Region 6 believes this study will perhaps provide some insights on how an alternate procedure, such as that found in the state's Use Support Assessment Protocols for assessing total phosphorus, might be employed when monitoring is infrequent or datasets are small. As such, EPA will take no further action on the above waters until this study is complete and any recommendations that may come about based on this study are released by OST/OWOW.

The approved Oklahoma 2014 Section 303(d) List includes 632 water body segments and 1131 segment-pollutant pairs. A detailed discussion of EPA's action is included in the decision document enclosed with this letter.

Thank you again for your efforts in developing Oklahoma's 2014 Section 303(d) list and for your cooperation in addressing EPA's concerns. If you have any questions, please contact me at (214) 665-7101 or Philip Crocker at (214) 665-6644.

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MAY 8 2014

WATER QUALITY DIVISION

Sincerely yours,



William K. Honker, P.E.

Director

Water Quality Protection Division

Enclosure: Decision Document

Decision Document for the State of Oklahoma 2014 § 303(d) List

Executive Summary of the Action

EPA approved the State of Oklahoma 2014 § 303(d) List. EPA reviewed the State of Oklahoma 2014 § 303(d) List and all associated documentation and concluded that the state developed its § 303(d) list in compliance with § 303(d) of the Clean Water Act ("the Act") and 40 CFR § 130.7.

Abbreviations

CALM – Consolidated Assessment and Listing Methodology

CFR – Code of Federal Regulations

CPP – Continuing Planning Process

CWA – Clean Water Act or (Act)

EPA – Environmental Protection Agency

OCC – Oklahoma Conservation Commission

ODEQ – Oklahoma Department of Environmental Quality

OWRB – Oklahoma Water Resources Board

TMDL – Total Maximum Daily Load

WQLS – Water Quality Limited Segments

WQMP – Water Quality Management Plan

A Purpose

The purpose of this review document was to describe the rationale for EPA's approval of the State of Oklahoma 2014 § 303(d) List of water quality limited segments (WQLS) requiring total maximum daily loads (TMDLs). The following sections identify those key elements to be included in the list submittal based on the Clean Water Act and EPA regulations. See 40 CFR § 130.7. EPA reviewed the methodology used by Oklahoma in developing the § 303(d) list and the description of the data and information the state considered. EPA's review of the State of Oklahoma 2014 § 303(d) List was based on

whether the state considered existing and readily available water quality related data and information and reasonably identified waters required to be listed.

B Statutory and Regulatory Background

B.1 Identification of WQLSs for Inclusion on Section 303(d) List

Section 303(d)(1)(A) of the Act directs:

“Each State shall identify those waters within its boundary for which effluent limitations required by § 301(b)(1)(A) and (B) are not stringent enough to implement any water quality standard applicable to such waters.”

The § 303(d) listing requirements apply to waters impaired by point and/or nonpoint source pollutants. EPA regulations at 40 CFR § 130.7(b)(1) require:

“Each State shall identify those water quality-limited segments still requiring TMDLs within its boundaries for which: (i) Technology-based effluent limitations required by sections 301(b), 306, 307, or other sections of the Act; (ii) More stringent effluent limitations (including prohibitions) required by either State or local authority preserved by section 510 of the Act, or Federal authority (law, regulation, or treaty); and (iii) Other pollution control requirements (e.g., best management practices) required by local, State, or Federal authority are not stringent enough to implement any water quality standards (WQS) applicable to such waters.”

Section 303(d)(1)(B) of the Act directs:

“Each State shall identify those waters or parts thereof within its boundaries for which controls on thermal discharges under section 301 are not stringent enough to assure protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife.”

EPA regulations at 40 CFR § 130.7(b)(2) require:

“Each State shall also identify on the same list developed under paragraph (b)(1) of this section those water quality-limited segments still requiring TMDLs or parts thereof within its boundaries for which controls on thermal discharges

under section 301 or State or local requirements are not stringent enough to assure protection and propagation of a balanced indigenous population of shellfish, fish and wildlife."

EPA regulations at 40 CFR § 130.7(b)(4) require:

"The list required under §§ 130.7(b)(1) and 130.7(b)(2) of this section shall include a priority ranking for all listed water quality-limited segments still requiring TMDLs, taking into account the severity of the pollution and the uses to be made of such waters and shall identify the pollutants causing or expected to cause violations of the applicable water quality standards."

EPA regulations at 40 CFR § 130.7(b)(6) require:

"Each State shall provide documentation to the Regional Administrator to support the State's determination to list or not list its waters as required by §§ 130.7(b)(1) and 130.7(b)(2). This documentation shall include as a minimum: (i) A description of the methodology used to develop the list;"

EPA regulations at 40 CFR § 130.7(d)(2) require:

"The Regional Administrator shall either approve or disapprove such listing and loadings not later than 30 days after the date of submission. The Regional Administrator shall approve a list developed under § 130.7(b) that is submitted after the effective date of this rule only if it meets the requirements of § 130.7(b). If the Regional Administrator approves such listing and loadings, the State shall incorporate them into its current WQM plan. If the Regional Administrator disapproves such listing and loadings, he shall, not later than 30 days after the date of such disapproval, identify such waters in such State and establish such loads for such waters as determined necessary to implement applicable WQS. The Regional Administrator shall promptly issue a public notice seeking comment on such listing and loadings. After considering public comment and making any revisions he deems appropriate, the Regional Administrator shall transmit the list and loads to the State, which shall incorporate them into its current WQM plan."

B.2 Consideration of Existing and Readily Available Water Quality-Related Data and Information

EPA regulations at 40 CFR § 130.7(b)(5) require:

“Each state shall assemble and evaluate all existing and readily available water quality-related data and information to develop the list required by §§ 130.7(b)(1) and 130.7(b)(2). At a minimum ‘all existing and readily available water quality-related data and information’ includes but is not limited to all of the existing and readily available water quality-related data and information about the following categories of waters: (i) Waters identified by the State in its most recent section 305(b) report as ‘partially meeting’ or ‘not meeting’ designated uses or as ‘threatened’; (ii) Waters for which dilution calculations or predictive models indicate nonattainment of applicable water quality standards; (iii) Waters for which water quality problems have been reported by local, state, or federal agencies; members of the public; or federal agencies; or academic institutions. These organizations and groups should be actively solicited for research they may be conducting or reporting. For example, university researchers, the United States Department of Agriculture, the National Oceanic and Atmospheric Administration, the United States Geological Survey, and the United States Fish and Wildlife Service are good sources of field data; and (iv) 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 to the assessment.”

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’s 1991 Guidance”).

EPA regulations at 40 CFR § 130.7(b)(6) require:

“Each State shall provide documentation to the Regional Administrator to support the State’s determination to list or not list its waters as required by §§ 130.7(b)(1) and 130.7(b)(2). This documentation shall include as a minimum:”

Subsection (i) is omitted at this point since it was cited under Section B.2 of this document. The content of subsection (i) is reviewed in connection with identification of water quality limited segments.

Continuing with subsection (ii):

"A description of the data and information used to identify waters, including a description of the data and information used by the State as required by § 130.7(b)(5); and (iii) A rationale for any decision to not use any existing and readily available data and information for any one of the categories of waters as described in § 130(b)(5); and (iv) Any other reasonable information requested by the Regional Administrator. Upon request by the Regional Administrator, each State must demonstrate good cause for not including a water or waters on the list. Good cause includes, but is not limited to, more recent or accurate data; more sophisticated water quality modeling; flaws in the original analysis that led to the water being listed in the categories in § 130.7(b)(5); or changes in conditions, e.g., new control equipment, or elimination of discharges."

While the states are required to evaluate all existing and readily available water quality-related data and information in deciding whether to list their waters, 40 CFR § 130.7(b)(6) allows states to decide to use or not use particular data or information in determining whether to list particular waters. 40 CFR § 130.7(b)(6)(iii) requires states to provide a rationale for any decision not to use particular data and information.

B.3 Priority Ranking & Two Year TMDL Development

Section 303(d)(1)(A) of the Act directs:

"The State shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters."

EPA regulations at 40 CFR § 130.7(b)(4) require:

"The list required under §§ 130.7(b)(1) and 130.7(b)(2) of this section shall include a priority ranking for all listed water quality-limited segments still requiring TMDLs, taking into account the severity of the pollution and the uses to be made of such waters and shall identify the pollutants causing or expected to cause violations of the applicable water quality standards. The priority ranking shall specifically include the identification of waters targeted for TMDL development in the next two years."

The 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 the state or national policies and priorities. See 57 FR 33040, 33045 (July 24, 1992), and EPA's 1991 Guidance.

B.4 Public Participation

The process for identifying WQLSs requires the involvement of the general public commonly referred to as the public participation process. The regulations at 40 CFR § 25 titled "Public Participation in Programs under the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and the Clean Water Act" govern the public participation requirements. EPA considers the TMDL program as a "covered activity" based on the activities described in the regulation.

EPA regulations at 40 CFR § 25.1(a) require:

"Basic requirements and suggested program elements for public information, public notification, and public consultation are set forth in § 25.4. These requirements are intended to foster public awareness and open processes of government decision making. They are applicable to all covered activities described in § 25.2(a)."

EPA regulations at 40 CFR § 25.2(a) require:

"The activities under the three Acts which are covered by this part are:"

EPA regulations at 40 CFR § 25.2(a)(5) require:

"Development and implementation of plans, programs, standards, construction, and other activities supported with EPA financial assistance (grants and cooperative agreements) to State, interstate, regional and local agencies (herein referred to as 'State, interstate and substate agencies');"

EPA regulations at 40 CFR § 25.3(a) require:

"EPA, State, interstate, and sub-state agencies carrying out activities described in § 25.2 (a) shall provide for, encourage and assist the participation of the public. The term 'the public' in the broadest sense means the people as a whole, the general populace. There are a number of identifiable, 'segments of the public'

which may have a particular interest in a given program or decision. Interested and affected segments of the public may be affected directly by a decision, either beneficially or adversely; they may be affected directly; or they may have some other concern about the decision. In addition to private citizens, the public may include, among others, representatives of consumer, environmental, and minority associations; trade, industrial, agricultural, and labor organizations; public health, scientific, and professional societies; civic organizations; public officials; and governmental and educational associations."

EPA regulations at 40 CFR § 25.4(b)(5) require:

"Each agency shall develop and maintain a list of persons and organizations who have expressed an interest in or may, by the nature of their purposes, activities or members, be affected by or have an interest in any covered activity. Generally, this list will be most useful where subdivided by area of interest, or geographic area. Whenever possible the list should include representatives of the several categories of interests listed under § 25.3(a). Those on the list, or relevant portions if the list is subdivided, shall receive timely and periodic notification of the availability of materials under § 25.4(b)(2)."

EPA regulations at 40 CFR § 25.4(c) require:

"Public notification. Each agency shall notify interested and affected parties, including appropriate portions of the list required by paragraph (b)(5) of this section, and the media in advance of times at which major decisions not covered by notice requirements for public meetings or public hearings are being considered. Generally, notices should include the timetable in which a decision will be reached, the issues under considerations, any alternative courses of actions or tentative determinations which the agency has made, a brief listing of the applicable laws or regulations, the location where relevant documents may be reviewed or obtained, identification of any associated public participation opportunities such as workshops or meetings, the name of an individual to contact for additional information, and any other appropriate information. All advance notifications under this paragraph must be provided far enough in advance to permit time for public response; generally this should not be less than 30 days."

EPA regulations at 40 CFR § 25.12(a)(1) require:

"EPA shall review the public participation work plan (or, if no work plan is required by this chapter for the particular financial assistance agreement, the

public participation element) included in the application to determine consistency with all policies and requirements of this part."

EPA regulations at 40 CFR § 25.12(a)(2)(i) require:

"Evaluation. EPA shall evaluate compliance with public participation requirements using the work plan, responsiveness summary, and other available information. EPA will judge the adequacy of the public participation effort in relation to the objectives and requirements of § 25.3 and § 25.4 and other applicable requirements. In conducting this evaluation, EPA may request additional information from the assisted agency, including records of hearings and meetings, and may invite public comment on the agency's performance. The evaluation will be undertaken as part of any mid-project review required in various programs under this chapter; where no such review is required the review shall be conducted at an appropriate midpoint in continuing EPA oversight activity. EPA may, however, undertake such evaluation at any point in the project period, and will do so whenever it believes that an assisted agency may have failed to meet public participation requirements."

The evaluation of public participation is generally a financial assistance (grants and cooperative agreements) evaluation, however, the establishment of the 303(d) list is an activity that has a public participation component. The adequacy of the public participation effort is an appropriate analysis during the review of the § 303(d) list.

The emphasis on public participation for the § 303(d) list can be traced through the regulations from the TMDL program at 40 CFR § 130.7 and the Continuing Planning Process (CPP) at 40 CFR § 130.5. Not all programs are required to have the process specified in the CPP which has an EPA approval. This reinforces this key element of the § 303(d) list review.

EPA regulations at 40 CFR § 130.7(a) require:

"General. The process for identifying water quality limited segments still requiring wasteload allocations, load allocations and total maximum daily loads (WLAS/LAs and TMDLs), setting priorities for developing these loads; establishing these loads for segments identified, including water quality monitoring, modeling, data analysis, calculation methods, and list of pollutants to be regulated; submitting the State's list of segments identified, priority ranking, and loads established (WLAS, LAs/TMDLs) to EPA for approval; incorporating the approved loads into the State's WQM plans and NPDES permits; and

involving the public, affected dischargers, designated areawide agencies, and local governments in this process shall be clearly described in the State Continuing Planning Process (CPP)."

EPA regulations at 40 CFR § 130.5(a) require:

"General. Each State shall establish and maintain a continuing planning process (CPP) as described under section 303(e)(3)(A-H) of the Act. Each State is responsible for managing its water quality program to implement the processes specified in the continuing planning process. EPA is responsible for periodically reviewing the adequacy of the State's CPP."

EPA regulations at 40 CFR § 130.5(b)(3) require:

"The process for developing total maximum daily loads (TMDLs) and individual water quality based effluent limitations for pollutants in accordance with section 303(d) of the Act and § 130.7(a) of this regulation."

C Review of the Oklahoma Submission

EPA is approving the State of Oklahoma 2014 § 303(d) List. EPA reviewed the State of Oklahoma 2014 § 303(d) List and concludes that the state developed its § 303(d) list in compliance with § 303(d) of the Act and 40 CFR § 130.7. EPA has determined that the Oklahoma submission includes all waters that meet § 303(d) listing requirements.

EPA's determination is based on its analysis of whether the state reasonably considered existing and readily available water quality related data and information, reasonably identified waters required to be listed, assigned a priority and provided a list of TMDLs to be developed in the next two years, and had adequate public participation.

C.1 Review of Identification of WQLSs for Inclusion on Section 303(d) List

EPA has determined the State of Oklahoma 2014 § 303(d) List includes all waters that meet § 303(d) listing requirements.

EPA's approval of the State of Oklahoma 2014 § 303(d) List is based on EPA's review of the data and information submitted concerning individual waters and the state's evaluations of those waters. EPA's evaluation is intended to determine whether the state

identified all waters that meet Federal listing requirements specified in section § 303(d) and 40 CFR § 130.7.

Oklahoma combined the 2014 § 305(b) report and the § 303(d) list into a single report ("the Integrated Report") in accordance with EPA's listing guidance titled 'Guidance for the 2006 Integrated Assessment and Reporting on the Quality of States' Waters' ('EPA's 2006 Guidance'). (USEPA.2005 July.). A single assessment methodology for the Integrated Report was used for both the § 305(b) reporting and the § 303(d) listing activities. The Oklahoma Integrated Report divided assessed waters into five categories as recommended by EPA's 2006 Guidance and three subcategories within Category 5 (Category 5a, 5b, 5c). Category 5, which includes waters for which available data and/or information indicate that at least one designated use is not being supported or is threatened, and for which a TMDL is needed, is the State of Oklahoma 2014 § 303(d) List that EPA approves or disapproves pursuant to § 303(d)(2) and 40 CFR § 130.7. Category 5 is the portion of the Integrated Report on which EPA is taking action today.

C.1.a.1 Review of the Methodology

EPA concludes the Oklahoma assessment methodology is consistent with EPA's 1991 Guidance document and with the State of Oklahoma water quality standards. (USEPA.1991 April.) and (Oklahoma. 2012.).

EPA concludes the listing methodology employed in developing the State of Oklahoma 2014 § 303(d) List describes a set of decision criteria that were reasonably applied.

The methodology is not an item for approval under 40 CFR § 130.7(d)(1). The methodology is an item specifically mentioned as documentation to support the List in 40 CFR § 130.7(b)(6)(i). Although EPA reviewed the Oklahoma listing methodology as part of our review of the listing submission, EPA's approval of the State of Oklahoma 2014 § 303(d) List should not be construed as agreement with or approval of the listing methodology.

In general, waters are listed in cases where a certain percentage of samples exceeded the applicable water quality criteria. The applicable percentages are provided in the Use Support Assessment Protocols (USAPs) in the Oklahoma Title 785, Chapter 46. Implementation of Oklahoma's Water Quality Standards.

C.1.a.1.a Methodology for Total Phosphorus in Scenic Rivers

The state elected to not place Lee Creek, Little Lee Creek, and Little River (Mountain Fork) on the 2012 § 303(d) list for total phosphorus. The basis for the state's decision to not list these waters was that they were in compliance with the total phosphorus criterion (0.037mg/L) protective of the Aesthetics beneficial use. Less than 25% of the rolling 90-day geometric means calculated for total phosphorus in each of these waters exceeded the criterion. In a segment of a Scenic River, 25% or more of these rolling 90-day geometric means must exceed the total phosphorus criterion for the Aesthetics beneficial use to be deemed not supported, as outlined in Oklahoma's Use Support Assessment Protocols (USAPs) found in the state's Administrative Code, Title 785, Chapter 46.

In its action on the 2012 § 303(d) list, EPA expressed concern about the possible incongruity between the state's water quality standards (WQS) and its use support assessment protocols for the evaluation of total phosphorus data against the state's Scenic Rivers criterion (0.037mg/L total phosphorus). Oklahoma's WQS, as outlined in Oklahoma's Administrative Code, Title 785, Chapter 45, state that the "thirty (30) day geometric mean total phosphorus concentration in waters designated "Scenic River"...shall not exceed 0.037mg/L." As a result of this observation, EPA determined to neither approve nor disapprove the state's omission of Lee Creek, Little Lee Creek and Little River (Mountain Fork) from the 2012 § 303(d) list for total phosphorus. At that time, EPA indicated that the conflicts between the Oklahoma WQS and USAPs must be reconciled in some manner so as to clarify the state's expectations for assessing the total phosphorus criterion in Scenic Rivers.

In its review of the 2014 § 303(d) list, EPA noted that the above mentioned waters remain unlisted for total phosphorus as a cause of impairment of the Aesthetics use. In considering a path forward on this issue, EPA Region 6 staff became aware of a similar issue being encountered by states with regard to implementation of EPA's recently released recreational water quality criteria (RWQC) (USEPA, 2012). Similar to the manner in which Oklahoma's total phosphorus criterion are described in the state's WQS, the RWQC incorporate a geometric mean that is not to be exceeded in any 30-day interval.

Nationally, States have expressed no concerns with the 30-day duration for waters that are frequently monitored (e.g., weekly) but are concerned about applying a 30-day duration for waters with more limited sampling (e.g., monthly or quarterly). For example, where monitoring is monthly, only one sample would be available to compare to the geometric mean WQS. The concern is with allowing one sample to represent a geometric

mean, when a geometric mean is supposed to reflect a type of central tendency based on multiple samples.

Where monitoring is performed monthly, EPA recognizes that using one sample as an expression of the geometric mean is untenable. In an effort to be responsive to concerns raised by the states, EPA's Office of Science and Technology (OST) and Office of Wetlands, Oceans and Watersheds (OWOW) have engaged statisticians on a project to determine if there is a scientifically defensible statistical basis for combining assessment periods in some way so as to increase the number of samples contributing to a geometric mean calculation but still be appropriately representative of the "true" 30-day geometric mean. For example, where monitoring is only conducted monthly, would it be statistically appropriate to use a rolling 5-month set of samples to calculate a geometric mean every 30 days to be compared to the WQS? Such an approach would allow 5 samples to contribute to the geometric mean calculation, but would it be statistically representative of the central tendency of the "true" 30-day period? In other words, would such an alternate procedure result in a scientifically defensible substitute for the "true" 30-day geometric mean? These are the types of questions that the statisticians in the OST/OWOW joint effort are exploring.

OST/OWOW anticipate having some type of work product available by summer 2015. The format for the work product (e.g., FAQs, white paper) has yet to be decided upon. EPA's hope is that this work will provide some insights on how an alternate procedure might be employed for assessment purposes when monitoring is infrequent or datasets are small.

EPA Region 6 believes the findings from this effort could have implications on the same questions being asked about the state of Oklahoma's implementation of its total phosphorus criterion in Scenic Rivers. EPA Region 6 is refraining from taking any action on the above described waters in Oklahoma until which time OST/OWOW have completed their work and released any recommendations based on this work.

C.1.b Review of Nonpoint Sources

Oklahoma properly listed waters with nonpoint sources causing or expected to cause impairment, consistent with EPA guidance. § 303(d) lists are to include all WQLSs still needing TMDLs, regardless of whether the source of the impairment is a point and/or nonpoint source. EPA's long-standing interpretation is that §303(d) lists apply to waters impacted by point and/or nonpoint sources. This interpretation has been described in EPA guidance, and most recently in a 1997 memorandum clarifying certain requirements for

1998 § 303(d) lists.

C.1.c Review of Waters within Indian Country

EPA's approval of the State of Oklahoma 2014 § 303(d) List extends to all water bodies on the list with the exception of those waters that are within Indian Country, as defined in 18 U.S.C. §1151. EPA is taking no action to approve or disapprove the state's list with respect to those waters at this time. EPA, or eligible Indian Tribes, as appropriate, will retain responsibilities under § 303(d) for those waters.

C.2 Review of Consideration of Existing and Readily Available Water Quality-Related Data and Information

EPA determined Oklahoma took reasonable steps to assemble all existing and readily available water quality-related data and information as required by 40 CFR § 130.7, including data and information from members of the public and government agencies via the public participation for the Oklahoma 2014 Integrated Report by the state of Oklahoma. Additional information on the Public Participation can be found in section C4 later in this document.

Based on the review conducted, EPA has determined the state properly considered and 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).

C.3 Review of Priority Ranking and Two Year TMDL Development

EPA determined Oklahoma properly assigned a priority ranking to listed waters for TMDL development and took into account the severity of pollution and the uses to be made of such waters.

As described in the Oklahoma Integrated Report, waters listed in category 5, which constitute the State of Oklahoma 2014 § 303(d) List, are subdivided into 3 subcategories: 5a, 5b, and 5c. After the final determination of beneficial use attainment is made, a four-level priority ranking for TMDL development will be established including waters targeted for TMDL development within the next two years (Priority 1). In accordance with EPA guidelines, priority determinations take into account the severity of the impairments and the designated uses of the waters impacted. Waters in Category 5 (the State's 303(d) list) are aggregated and prioritized according to their eleven digit hydrologic unit code (HUC11) watershed. The prioritization process closely followed

that used to develop the Unified Watershed Assessment. The priority evaluation considered three key areas, [1] the vulnerability of waters to degradation, [2] the risks to public health and [3] the threat to aquatic life, with a total of ten criteria.

The outline below identifies the criteria under the three key areas used to establish the TMDL priority for each HUC11 watershed.

1) Vulnerability of water bodies to degradation

- a) Percent Stream Length/Lake Area Impaired
- b) Pollutant Priority Score (Pairwise pollutant comparison rating)
- c) Pristine Waters
 - i) Scenic Rivers
 - ii) Outstanding Resource Waters
 - iii) High Quality Waters
 - iv) Sensitive Water Supplies
- d) EQIP Local Emphasis Area

2) Risks to public health

- a) Public Water Supply Customers
- b) Public Water Supply Intakes

3) Threat to aquatic life and other water-dependent wildlife

- a) Presence of threatened and endangered species.
- b) Area of Waters of Recreational and/or Ecological Significance (Appendix B)
- c) Wetland Area
 - i) Presence of USFWS Priority Wetlands
 - ii) Change in Wetland Area

EPA concludes that Oklahoma has identified the WQLSs targeted for TMDL development in the next two years.

C.4 Review of Public Participation

EPA has determined that Oklahoma took reasonable steps to include the public in the process of producing the State of Oklahoma 2014 § 303(d) List.

C.4.a Review of Public Notice for Public Participation

EPA has determined the information on the public participation process and the notice period were reasonable based on the review of documents submitted. The public notice posted December 31, 2014 requested comments on the draft State of Oklahoma 2014 § 303(d) List and on the rationale for development of the State of Oklahoma 2014 § 303(d) List. The public notice provided a 30 day comment period. The public notice was also published in 'The Journal Record' and distributed to appropriate stakeholders.

C.4.b Review of Responsiveness Summary for Public Participation

EPA has determined that the responses to comments and actions were reasonable based on the review of documents submitted. Oklahoma prepared a response to comments document following conclusion of public comment period and assessment of submitted data. This response to comments was included in the Integrated Report submittal to EPA on April 13, 2015. The response to comments and finalized Integrated Report will also posted on the Oklahoma website found at: http://www.deq.state.ok.us/wqdnew/305b_303d/index.html.

D. Administrative Record Supporting this Action

This EPA decision to approve the State of Oklahoma 2014 § 303(d) List is based on a careful review of the materials submitted by the state and the State of Oklahoma 2014 § 303(d) List itself. The administrative record supporting EPA's decision comprises the materials submitted by the state, CWA § 303(d), associated Federal regulations, Oklahoma assessment methodology, EPA guidance concerning preparation of § 303(d) lists, this decision document, supporting reports and the decision letter. EPA has determined that the materials provided by the state with its submittal provided sufficient documentation to support our analysis and findings that the state listing decisions meet the requirements of the Clean Water Act and associated Federal regulations. We are aware that the state compiled and considered additional materials (e.g. raw data and water quality analysis reports) as part of its list development process that were not included in the materials submitted to EPA. EPA did not consider these additional materials as part of its review of the listing submission. It was unnecessary for EPA to review all of the

materials considered by the state in order to determine that the state complied with the applicable Federal listing requirements. Moreover, Federal regulations do not require the state to submit all data and information considered as part of the listing submission.

E Administrative Records Cited and References

OK. 2012. Oklahoma Water Quality Standards, Oklahoma Administrative Code, Title 785, Chapter 45.

OK. 2012. Oklahoma Water Quality Standards Implementation, Oklahoma Administrative Code, Title 785, Chapter 46.

OK. 2013 Sep. Oklahoma 2012 Integrated Report Submission' including public comment responsiveness summary and supporting documentation

USEPA.1972 Oct. 33 USC 1251 et seq Chapter 26 – Water Pollution Prevention and Control. Public Law 92-500. October 18, 1972.

<http://www.gpo.gov/fdsys/pkg/USCODE-2011-title33/pdf/USCODE-2011-title33-chap26.pdf>

USEPA.1991 Apr. Guidance for Water Quality Based Decisions: The TMDL Process. EPA 440/4-91-001. April 1991. Available at <http://www.epa.gov/waterscience/library/modeling/SASD0109.pdf>.

USEPA.1992. Part 130 of Title 40 of the Code of Federal Regulations, section 130.7, contains the regulations currently governing the Total Maximum Daily Load program, 1992.

USEPA.1993 Nov. Guidance for 1994 Section 303(d) Lists. Geoffrey H. Grubbs - November 26, 1993.

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