

## **Decision Document for the State of Oklahoma 2022 § 303(d) List**

### **Executive Summary of the Action**

The EPA is approving the state of Oklahoma 2022 § 303(d) List. The EPA reviewed the state of Oklahoma 2022 § 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**

CFR – Code of Federal Regulations

CPP – Continuing Planning Process

CWA – Clean Water Act or (Act)

EPA – Environmental Protection Agency

ODEQ – Oklahoma Department of Environmental Quality

OWRB – Oklahoma Water Resources Board

TMDL – Total Maximum Daily Load

USAP – Use Support Assessment Protocol

WQLS – Water Quality Limited Segments

### **A. Purpose**

The purpose of this document is to describe the rationale for the EPA's approval of the State of Oklahoma 2022 § 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. The EPA reviewed the methodology used by Oklahoma in developing the § 303(d) list

and the description of the data and information the state considered. The EPA's review of the State of Oklahoma 2022 § 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 (USEPA, 1972) 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) (USEPA, 1992) 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 3 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.”*

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’s 1991 Guidance”) (USEPA, 1991).

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 the EPA's 1991 Guidance (USEPA, 1991).

#### **B.4 Public Participation**

The process for identifying WQLSs requires the involvement of the general public which is 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. The 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 § 25.2(a)(8) require:

*“Other activities which the Assistant Administrator for Water and Waste Management, the Assistant Administrator for Enforcement, or any EPA Regional Administrator deems appropriate in view of the Agency’s responsibility to involve the public in significant decisions.”*

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.

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**

The EPA is approving the State of Oklahoma 2022 § 303(d) List. The EPA reviewed the State of Oklahoma 2022 § 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. The EPA has determined that the Oklahoma submission includes all waters that meet § 303(d) listing requirements.

The 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**

The EPA has determined the State of Oklahoma 2022 § 303(d) List includes all waters that meet § 303(d) listing requirements. The EPA's approval of the State of Oklahoma 2022 § 303(d) List is based on the EPA's review of the data and information submitted through the online Assessment and Total Maximum Daily Load Tracking and Implementation System (ATTAINS) concerning individual waters and the state's evaluations of those waters (USEPA, 2017). The 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 2022 § 305(b) report and the § 303(d) list into a single report ("the Integrated Report") in accordance with the EPA's listing guidance titled 'Guidance for the 2006 Integrated Assessment and Reporting on the Quality of States' Waters' (ODEQ, 2022; USEPA, 2005). 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 placed waters into five categories as recommended by the EPA's 2006 Guidance, including three state-derived 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 2022 § 303(d) List that the 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 the EPA is taking action today.

#### **C.1.a Review of the Methodology**

The Oklahoma assessment methodology is found in two documents, including the Use Support Assessment Protocols (USAPs) in Oklahoma Administrative Code, Title 785, Chapter 46, “Implementation of Oklahoma’s Water Quality Standards” and the state’s CPP (ODEQ, 2012; OWRB, 2020b). The EPA concludes the Oklahoma assessment methodology is consistent with the EPA’s 1991 Guidance document and with the state of Oklahoma water quality standards. (OWRB, 2020a; USEPA, 1991).

The EPA concludes the listing methodology employed in developing the State of Oklahoma 2022 § 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 the EPA reviewed the Oklahoma listing methodology as part of our review of the listing submission, the EPA’s approval of the State of Oklahoma 2022 § 303(d) List should not be construed as an approval of the listing methodology.

### **C.1.b Review of Nonpoint Sources**

Oklahoma properly listed waters with nonpoint sources causing or expected to cause impairment, consistent with the 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. The 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 an EPA guidance, and most recently in a 1997 memorandum clarifying certain requirements for 1998 § 303(d) lists (USEPA, 1997).

### **C.1.c Review of Waters within Indian Country**

Following the U.S. Supreme Court decision in *McGirt v Oklahoma*, 140 S. Ct. 2452 (2020), the Governor of the State of Oklahoma requested approval under § 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users, Pub. Law 109-59, 119 Stat. 1144, 1937 (August 10, 2005) (“SAFETEA”), to administer in certain areas of Indian country (as defined at 18 U.S.C. § 1151) the State’s environmental regulatory programs that were previously approved by the EPA for areas outside of Indian country. The State’s request excluded certain areas of Indian country further described below.

On October 1, 2020, the EPA approved Oklahoma’s SAFETEA request to administer all the State’s EPA-approved environmental regulatory programs, including the Oklahoma § 303(d) program, in the requested areas of Indian country. As requested by Oklahoma, the EPA’s approval under SAFETEA does not include Indian country lands, including rights-of-way running through the same, that: (1) qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S.C. § 1151(c); (2) are held in trust by the United States on behalf of an individual Indian or Tribe; or (3) are owned in fee by a Tribe, if the Tribe (a) acquired that fee title to such land, or an area that included such land, in accordance with a treaty with the United States to which such Tribe was a party, and (b) never allotted the land to a member or citizen of the Tribe (collectively “excluded Indian country lands”).

The EPA’s approval under SAFETEA expressly provided that to the extent the EPA’s prior approvals of Oklahoma’s environmental programs excluded Indian country, any such exclusions are superseded for the geographic areas of Indian country covered by the EPA’s approval of Oklahoma’s SAFETEA request.<sup>1</sup> The approval also provided that future revisions or amendments to Oklahoma’s approved environmental regulatory programs would extend to the covered areas of Indian country (without any further need for additional requests under SAFETEA).<sup>2</sup>

The State of Oklahoma’s 2022 303(d) List of impaired waters includes waters that are located throughout the state and in certain areas of Indian country. Although the State did not distinguish between state and Indian country waters or identify those listed waters that are within Indian country, the EPA recognizes that the State does have authorization to implement the 303(d) program in certain areas of Indian country as described above.

---

<sup>1</sup> The EPA’s prior approvals relating to Oklahoma’s list of impaired waters frequently noted that the list was not approved to apply in areas of Indian country located in the state. See, e.g., the EPA’s July 14, 2021, approval of the State of Oklahoma’s 2020 303(d) List of impaired waters. Such prior expressed limitations are superseded by the EPA’s approval of Oklahoma’s SAFETEA request.

<sup>2</sup> On December 22, 2021, EPA proposed to withdraw and reconsider the October 1, 2020, SAFETEA approval. See <https://www.epa.gov/ok/proposed-withdrawal-and-reconsideration-and-supporting-information>. The EPA expects to engage in further discussions with tribal governments and the State of Oklahoma as part of this reconsideration. The EPA also notes that the October 1, 2020, approval is the subject of a pending challenge in federal court. *Pawnee Nation of Oklahoma v. Regan*, No. 20-9635 (10th Cir.). The EPA may make further changes to the approval of Oklahoma’s program to reflect the outcome of the proposed withdrawal and reconsideration of the October 1, 2020, SAFETEA approval.

Therefore, consistent with the EPA's October 1, 2020, SAFETEA approval, the EPA is approving the State of Oklahoma's 303(d) List, which includes both state waters and waters within certain areas of Indian country. In accordance with the *EPA Policy on Consultation and Coordination with Indian Tribes* (USEPA, 2011b), the EPA offered consultation (by letter dated July 25, 2022) to tribal governments that may be affected by this action. The EPA also hosted an information call with interested tribes on July 27, 2022. We received no requests for tribal consultation.

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

The 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 process for the Oklahoma 2022 Integrated Report by the State of Oklahoma. Additional information on the state's public participation process can be found in section C.4 of this document.

Based on the review conducted, the 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**

The EPA determined Oklahoma 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 2022 § 303(d) List, are subdivided into 3 subcategories: 5a (TMDL is underway or will be scheduled), 5b (a review of the water quality standards will be conducted before a TMDL is scheduled), and 5c (additional data and information will be collected before a TMDL or review of the water quality standards is scheduled). After the final determination of beneficial use attainment is made, a four-level priority ranking for TMDL development (Priority 1 – 4) 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 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.

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

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

#### **C.4 Review of Public Participation**

The EPA has determined that Oklahoma took reasonable steps to include the public in the completion of the State of Oklahoma 2022 § 303(d) List.

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

The EPA has determined that the state's public participation process and notice period were reasonable based on the review of documents submitted. ODEQ published a public notice ("MS12114522", 2022) on May 2, 2022, within *The Journal Record*, a newspaper and information source based out of Oklahoma City, OK. This public notice informed the Oklahoma public of an opportunity to review and make comments on the draft 2022 Integrated Report and provided a 30-day window to do so between May 2 and June 3, 2022. The public notice also stated that ODEQ would host a virtual public meeting on the Zoom meeting platform that would be held at 2:30pm on Wednesday, May 25, 2022. ODEQ posted a document on their website that included instructions on how to use the Zoom meeting platform to participate in this public meeting.

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

The EPA notes that numerous public commenters expressed concern regarding the segment of the Arkansas River in Tulsa, Oklahoma, for which the ODEQ has assigned an insufficient information/data (Integrated Report Category 3) status. The EPA encourages ODEQ to take appropriate steps to facilitate a determination of impairment status in the state's 2024 Integrated Report.

#### **D. Administrative Record Supporting this Action**

This decision by the EPA to approve the State of Oklahoma 2022 § 303(d) List is based on a careful review of the materials submitted by the state and the State of Oklahoma 2022 § 303(d) List itself. The administrative record supporting the EPA’s decision comprises the materials submitted by the state, CWA § 303(d), associated federal regulations, the Oklahoma assessment methodology, guidance by the EPA concerning preparation of § 303(d) lists, this decision document, supporting reports and the decision letter. The 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 the EPA. The EPA did not consider these additional materials as part of its review of the listing submission. It was unnecessary for the 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**

*McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020).

MS12114522 PUBLIC NOTICE: The Oklahoma Department of Environmental Quality Announces that the Draft 2022 Integrated Report, “Surface Water Quality in Oklahoma”, is Available for Review. (2022, May 3). *The Journal Record*. Volume 127, Number 85, Page 8B.

ODEQ. 2012. Continuing Planning Process, 2012 Version.

ODEQ. 2022. Water Quality in Oklahoma, 2022 Integrated Report.

OWRB. 2020a. Oklahoma Water Quality Standards, Oklahoma Administrative Code, Title 785, Chapter 45.

OWRB. 2020b. Oklahoma Water Quality Standards Implementation, Oklahoma Administrative Code, Title 785, Chapter 46.

Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" or "SAFETEA-LU", Pub. L. No. 109-59 (2005).

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

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

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.

USEPA. 1997 Aug. National Clarifying Guidance for 1998 State and Territory Section 303(d) Listing Decisions. Robert H. Wayland III - August 17, 1997.

USEPA. 2000 Apr. EPA Review of 2000 Section 303(d) Lists. Robert H. Wayland III - April 28, 2000.

USEPA. 2001 Nov. 2002 Integrated Water Quality Monitoring and Assessment Report Guidance. Robert H. Wayland III - November 19, 2001.

USEPA. 2002 March. Clarification of the Use of Biological Data and Information in the 2002 Integrated Water Quality Monitoring and Assessment Report Guidance. Robert H. Wayland III - March 26, 2002.

USEPA. 2002 May. Recommended Framework for EPA Approval Decisions on 2002 State Section 303(d) List Submissions. Charles H. Sutfin - May 20, 2002.

USEPA. 2002 July. EPA Consolidated Assessment and Listing Methodology (CALM), July 2002.

USEPA. 2003 July. Guidance for 2004 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b), and 314 of the Clean Water Act. Diane Regas - July 21, 2003.

USEPA. 2005 July. Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act. Diane Regas, July 25, 2005.

USEPA. 2006 Oct. Information Concerning 2008 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions. Diane Regas - October 12, 2006.

USEPA. 2009 May. Information Concerning 2010 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions. Suzanne Schwartz - May 5, 2009.

USEPA. 2011a March. Information Concerning 2012 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions. Denise Keehner - March 21, 2011.

USEPA. 2011b May. EPA Policy on Consultation and Coordination with Indian Tribes. May 4, 2011.

USEPA. 2013 Sept. Information Concerning 2014 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions. Denise Keehner – September 3, 2013.

USEPA. 2013 Dec. Memorandum: A New Long-Term Vision for Assessment, Restoration, and Protection under the Clean Water Act Section 303(d) Program. Nancy Stoner – December 5, 2013.

USEPA. 2015 Aug. Memorandum: Information Concerning 2016 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions. Benita Best-Wong – August 13, 2015.

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