



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

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WATER  
DIVISION

JUN 25 2019

Ms. Mary Anne Nelson, Administrator  
Water Quality Division  
Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706

Re: Approval of Idaho's Final 2016 Section 303(d) List

Dear Ms. Nelson:

The U.S. Environmental Protection Agency has conducted a review of Idaho's 2016 Integrated Report (IR), including the Section 303(d) list, supporting documentation and information. Based on our review of the submittal, the EPA has determined that Idaho's 2016 list of 853 assessment unit-cause combinations meets the requirements of Section 303(d) of the Clean Water Act (CWA) and the Agency's implementing regulations. Although the IDEQ's IR describes the status of all of Idaho's waters, the EPA is only acting on the waters listed in Category 5 of the IR ('the 303(d) list'). Therefore, the EPA approves Idaho's 2016 303(d) list. The statutory and regulatory requirements, and a summary of the EPA's review of Idaho's compliance with each requirement, are described in the enclosure to this letter.

In 1994, in response to a federal District Court order, the EPA published a 303(d) list for the State of Idaho which identified all impaired waters within the state, including some waters within Indian Country as defined at 18 USC § 1151. The Agency's approval of the State's 2016 Section 303(d) list does not apply to any waters, or portions thereof, that are within Indian Country. The EPA is taking no action to approve or disapprove the State's list with respect to any waters within Indian Country.

We would like to acknowledge the hard work of Amy Steimke (separated) and Don Essig (retired) in developing the final 2016 Section 303(d) list, as well as the continued coordination offered by Jason Pappani and Robert Esquivel. As staffing changes occurred, the IDEQ team continued moving forward with the list development, while maintaining close communication with the EPA to ensure an approvable Integrated Report was delivered.

If you have any questions, please contact Miranda Hodgkiss, the EPA staff lead, at (206) 553-0692, or Dave Croxton, the Watershed Section Manager, at (206) 553-6694.

Sincerely,

A handwritten signature in blue ink, appearing to read "Daniel D. Opalski".

Daniel D. Opalski  
Director

Enclosure

cc: Jason Pappani, Surface Water Program Manager, IDEQ (via email)  
Robert Esquivel, Federal Reporting Coordinator, IDEQ (via email)

## **Summary**

The purpose of this document is to describe the Environmental Protection Agency's rationale for approving Idaho's 2016 Clean Water Act (CWA) Section 303(d) list of water quality limited segments (WQLS), identified in the State's 2016 Integrated Report (IR). The following sections identify those elements required to be included in the list submittal based on the CWA and EPA regulations (see 40 CFR § 130.7). The EPA reviewed the methodology used by the State in developing its list and the description of the data and information it considered. The EPA's review of Idaho's 303(d) list is based on the EPA's analysis of whether the State reasonably considered existing and readily available water quality data and information and reasonably identified waters required to be listed. This review describes the basis for the EPA's decision to approve the State's listings of WQLS requiring a Total Maximum Daily Load (TMDL).

Section 305(b) of the CWA requires that each state report every two years on the health of *all* its waters. Information from this report, known as the 305(b) report, has historically been used to develop the "threatened and impaired waters" list, or "303(d) list," required by CWA § 303(d) and implementing regulations at 40 CFR § 130.7(b)(1). Most states compile the data and findings from the 305(b) report and add information from other sources, such as the state's report of waters affected by nonpoint sources (CWA § 319), to produce the 303(d) list. The EPA recommends that states combine the 303(d) list with the 305(b) report to create an IR. The IR is due on April 1<sup>st</sup> of even-numbered years. The EPA is required to approve or disapprove the 303(d) list (40 CFR § 130.7(d)(2)).

The Idaho Department of Environmental Quality released the draft IR for public review from July 5, 2018 through August 6, 2018. The IDEQ sent the final IR and submission letter to the EPA on November 9, 2018.

Based on its review of the final IR and 303(d) list contained within, as well as supporting documents, the EPA finds that the 2016 303(d) list meets the necessary statutory and regulatory requirements found in Section 303(d) of the CWA, 33 U.S.C. Section 1313(d), and the EPA's implementing regulations at 40 CFR Part 130. The remainder of this document presents the EPA's rationale in support of this decision.

## I. EPA's Review Process

The EPA's review includes the evaluation of Idaho's draft and final 2016 303(d) lists, the priority ranking of impaired waters, the data solicitation process, and the public participation process. In its review of the 2016 303(d) list, the EPA evaluated whether the State reasonably considered existing and readily available water quality-related data and information and reasonably identified waters required to be listed. The IDEQ published the latest version of its assessment methodology in 2016 (WBAGIII). While the EPA doesn't approve assessment methodologies, it did review and provide comments on the draft WBAGIII as it was being developed. In reviewing the 303(d) list, the EPA considered whether the state reasonably applied WBAGIII to make listing determinations.

The EPA must take action to approve or disapprove the State's submitted 303(d) list (40 CFR § 130.7(d)(2)). Because the 303(d) list is submitted as a component of the IR, the EPA also reviews the IR to ensure all of the required elements are included.

The EPA concludes the State properly assembled and reasonably evaluated all existing and readily available data and information, including data and information relating to the categories of waters specified in 40 CFR § 130.7(b)(5). Based on the EPA's review, it has been found that the State developed its Section 303(d) list in compliance with Section 303(d) of the CWA and 40 CFR § 130.7. This conclusion is supported by the information outlined in Parts II and III of this document.

## II. Review of Integrated Report & 303(d) List Required Elements

### A. Status of All Waters in the State

Regulations at 40 CFR § 130.8(b)(1) provide that the IR must include a "description of the water quality of all waters...and the extent to which the quality of waters provides for the protection and propagation of a balanced population of shellfish, fish, and wildlife and allows recreational activities in and on the water." This means the IR should report on the health of all waterbodies in the state and whether or not the beneficial uses of those waterbodies are being achieved.

The EPA's *2002 Integrated Water Quality Monitoring and Assessment Report Guidance* (EPA 2001) suggests a categorization strategy where waterbodies are placed into at least one of five different categories, based on attainment of water quality standards (WQS) and beneficial use support. Idaho uses these categories for its IR, and they have developed their own definitions of each category, as described below.

- **Category 1** waters are wholly within a designated wilderness or inventoried roadless area and presumed to be fully supporting all beneficial uses. Category 1 waters are listed in **Appendix E** of the 2016 IR.

*Note:* For the 2016 cycle, the IDEQ made an update to the Category 1 definition based on the promulgation of the 2008 Idaho Roadless Rule by the US Department of

Enclosure: U.S. EPA Review and Decision Rationale for Approval of Idaho's 2016 303(d) List

Agriculture. The new rule changes previous classifications for roadless areas, and thus has resulted in changes to the boundaries of U.S. Forest Service roadless areas. For the IR, the IDEQ presumes that waters wholly within the 2008 Idaho Roadless Rule theme 'Wild Land Recreation' are fully supporting all beneficial uses, unless readily available data or information demonstrates impairment. This theme is the most protective of the five themes in the rule. Because of this change to the Category 1 definition which makes it more restrictive, 119 assessment units (AUs) were moved out of Category 1. *See Section 3.3.1.1 of the IR.*

- **Category 2** waters are fully supporting those beneficial uses that have been assessed. The use attainment of the remaining beneficial uses has not been determined due to insufficient data (or no data) and information. Category 2 waters are listed in **Appendix F** of the 2016 IR.
- **Category 3** waters have insufficient data (or no data) and information to determine if beneficial uses are being attained. Category 3 waters are listed in **Appendix G** of the 2016 IR.
- **Category 4** waters do not support one or more beneficial uses, but they do not require the development of a TMDL. Category 4 has three subcategories:
  - **Category 4a** waters have had a TMDL completed and approved by the EPA. Category 4a waters are listed in **Appendix H** of the 2016 IR.
  - **Category 4b** waters have had pollution control requirements other than a TMDL placed on them, and these waters are reasonably expected to attain WQS within a reasonable time period. Category 4b waters are listed in **Appendix I** of the 2016 IR.
  - **Category 4c** waters are those failing to meet applicable WQS due to other types of pollution (e.g., flow alteration), not a pollutant. Category 4c waters are listed in **Appendix J** of the 2016 IR.
- **Category 5** waters do not meet applicable WQS for one or more beneficial uses due to one or more pollutants; therefore, an EPA-approved TMDL is needed. Category 5 waters are listed in **Appendix K** of the 2016 IR.

Based on this categorization scheme, the term "303(d) list" refers only to waters in Category 5, which is the list of impaired and threatened waters (stream/river segments and lakes). The State identifies these waters where required pollution controls are not sufficient to attain or maintain applicable WQS. The listing requirement applies to waters impaired by point and/or nonpoint sources, pursuant to the EPA's long-standing interpretation of CWA Section 303(d).

The CWA and EPA regulations require states to submit the following information as part of their Section 303(d) list submission:

- A list of water quality-limited (impaired and threatened) waters still requiring TMDL(s) [waters assigned to Category 5], pollutants causing the impairment, and

priority ranking for TMDL development (including waters targeted for TMDL development within the next two years).

- Any other reasonable information requested by the EPA, such as demonstrating good cause for not including a water or waters on the list.

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

The EPA policy allows states to remove waterbody segments from the 303(d) list, or delist them, after they have developed a TMDL or after other changes to correct water quality problems have been made. For example, once a TMDL has been approved, the waters are moved from Category 5 to Category 4a. Sometimes, "other pollution control requirements" are stringent enough to implement WQS (see 40 CFR § 130.7 (b)(1)). In these cases, the state can develop a plan which meets the elements outlined in the EPA's 2008 IR Guidance (EPA 2006). Once the plan has been developed and accepted by the EPA, the WQLS is moved into Category 4b. If WQS are attained and beneficial uses are supported, the waters are moved to Category 2. Occasionally, a waterbody can be taken off of the 303(d) list as a result of a change in water quality standards or removal of designated uses; however, designated uses cannot be deemed unattainable and removed until a thorough analysis clearly shows they cannot be attained.

The EPA reviewed IDEQ's IR, and concludes the State properly assembled its assessment of the water quality of all waters in the state, in accordance with the regulations and suggested categorization schemes.

## B. Priority Ranking

The EPA regulations codify and interpret the requirement in Section 303(d)(1)(A) of the CWA that States establish a priority ranking for listed waters. The regulations at 40 CFR § 130.7(b)(4) require States to "include a priority ranking for all listed water quality limited segments still requiring TMDL." States must also identify those WQLS targeted for TMDL development within the next two years. In prioritizing and targeting waters, States must, at a minimum, consider the severity of the pollution and the designated uses of such waters. States may consider other factors relevant to prioritizing waters for TMDL development, including immediate programmatic needs; vulnerability of particular waters as aquatic habitats; recreational, economic, and aesthetic importance of particular waters; degree of public interest and support; and State or national policies and priorities.

The EPA reviewed the State's priority ranking of listed waters for TMDL development and concludes that the State properly took into account the severity of pollution and the uses to be made of such waters. The EPA reviewed the State's identification of WQLS targeted for TMDL development in the next two years and concludes that the targeted waters are

appropriate for TMDL development in this period. The priority ranking of waters for TMDL development can be found in **Appendix N** of the IR.

**C. Consideration of Data and Listing Methodology**

In developing 303(d) lists, States are required to assemble and evaluate all existing and readily available water quality-related data and information (40 CFR § 130.7(b)(5)). This includes, at a minimum, consideration of data and information about the following categories of waters: (1) waters identified as partially meeting or not meeting designated uses, or as threatened, in the State's most recent Section 305(b) report; (2) waters for which dilution calculations or predictive modeling indicate nonattainment of applicable standards; (3) waters for which water quality problems have been reported by governmental agencies, members of the public, or academic institutions; and (4) waters identified as impaired or threatened in any Section 319 nonpoint assessment submitted to the EPA. In addition to these minimum categories, States should consider and evaluate any other water quality-related data and information that is existing and readily available. States may decide whether or not to rely on particular data or information in determining whether to list the applicable waters.

In addition to requiring States to assemble and evaluate all existing and readily available water quality-related data and information, the EPA regulations at 40 CFR § 130.7(b)(6) require States to include, as part of their submissions to the EPA, documentation to support their decisions on whether or not to rely on particular data and information, as well as their decisions on whether or not to list waters. Such documentation needs to include, at a minimum, the following information: (1) a description of the methodology used to develop the 303(d) list (the 'listing methodology'); (2) a description of the data and information used to identify waters; (3) a rationale for any decision not to use existing and readily available data and information; and (4) any other reasonable information requested by the EPA.

The IDEQ actively sought data collected by federal agencies, other state agencies, tribes, local governments, watershed councils and private and public organizations and individuals. A 60-day call for data was conducted from November 30, 2015 to February 1, 2016.

After the call for data, the IDEQ evaluated the data and prepared a statewide assessment. The IDEQ prepared the IR and list of impaired waters using data they collected and data received during the call for data. The data was used according to the data tiering process outlined in **Table 4 and Sections 3.2.2.1-3.2.2.3** of the IR.

**Section 3.2** of the IR references the listing methodology used by the IDEQ to develop the 2016 303(d) list. The listing methodology is found in the document, *Water Body Assessment Guidance III (WBAG III)* (IDEQ 2016). WBAG III contains a standardized approach for developing the 303(d) list, and it has been previously reviewed. The IDEQ used the assessment category decision factors identified in WBAG III as the basis for the 2016 listing decisions. The EPA has reviewed these decisions and concludes the State's assessments are consistent with federal listing requirements and applicable WQS.

#### D. Public Participation Process

The process for identifying WQLS requires the involvement of the general public (40 CFR § 130.7(a)). This is commonly referred to as the public participation process. The public participation process is intended to foster public awareness and open processes of government decision making (see 40 CFR § 25.1 (a)). At a minimum, the public participation process must provide, encourage, and assist the participation of the public or segments of the public which may have interest in the decision (see 40 CFR §§ 25.3(a) and 25.4(b)(5)). The public notification must be provided far enough in advance of agency action to permit time for public response. In general, this should not be less than 30 days (see 40 CFR § 25.4(c)). The IR must describe the process for involving the public and other stakeholders in the development of the 303(d) list (40 CFR § 25.4).

The draft 2016 IR and list of WQLS were presented for public comment from July 5, 2018 to August 6, 2018. The IDEQ received three comment letters, to which it responded in **Appendix Q** of the IR. The EPA has reviewed the IDEQ's public participation process for the 2016 IR and 303(d) list and finds it to be consistent with federal requirements.

### III. **Changes from Previous Cycle**

Idaho's 2014 303(d) list was used as the starting point for developing the 2016 303(d) list. The EPA reviewed the waters in Category 5 in 2014 and the category in which they were found in 2016. The IDEQ developed a delisting report, which explains the rationale for each delisting, which the EPA reviewed and commented on. The EPA reviewed both the waters that were added to the 303(d) list and the waters that were removed from the 303(d) list.

#### A. Waters Added to Category 5

According to the IDEQ's IR (see **Section 3.3.3.1**), a total of 77 new Category 5 listings were added in 2016. This includes 62 listings based on new data, eight to correct the identification of the impairment or to correct consistencies in terminology, four to correct a previous identification as Category 4c, and three to create new AUs to correct digitizing errors. The IDEQ provided the EPA with spreadsheets which summarized changes to each Category. The basis and rationale for each of these changes were reviewed by the EPA and were found to be sufficient.

#### B. Waters Removed from Category 5

According to the IDEQ's IR (see **Section 3.3.3.2**), a total of 51 Category 5 listings from 2014 were removed ("delisted") in 2016. This includes 16 delistings because the original listing was in error, 15 to either create consistencies in terminology, fix a duplicative listing, or correct identification of the impairment, nine because data indicates the standard has been attained, eight due to approval of a TMDL, and three because the cause no longer applies due to assessment unit splits. As provided in 40 CFR § 130.7(b)(6)(iv), the EPA requests that the State demonstrate good cause for not including these waters. The EPA finds that Idaho has demonstrated good cause for not including these previously listed water body

segment/pollutant pairs on its 2016 303(d) list. The IDEQ has provided sufficient justification and documentation for each of these delistings in their submission to the EPA, which is contained in Appendix L of the final IR. The two main reasons for delisting from Category 5 are attainment of the WQS (move to Category 1 or 2), or a TMDL approval (move to Category 4a). There may also be other reasons for delisting with good cause. Delisted waterbody-pollutant pairs were moved to Categories 1 and 2 if there was sufficient data to support attainment status. If insufficient data existed, those waterbody-pollutant pairs were placed in Category 3 (unassessed). The 'delisting with good cause' reasons are summarized and described further below. The basis and rationale for each of these changes were reviewed by the EPA and were found to be sufficient.

*i. WQS Attainment*

The IDEQ removed nine waterbody segment/pollutant pairs from Category 5 (i.e. 303(d) list) because information shows they are meeting standards. One of these delistings was a direct result of restoration activities and eight delistings were the result of new data showing attainment of WQS. The EPA believes the IDEQ removed these waterbody segments/pollutant pairs from Idaho's Section 303(d) list in compliance with Section 303(d) of the Act and 40 CFR § 130.7 and in a manner consistent with the IDEQ's listing methodology. The EPA concludes the IDEQ reasonably considered existing and readily available water quality-related data and information and reasonably identified waterbody segments to be removed from the list because data showed water quality standards were being met. The EPA has determined the removal of these water segments is consistent with 40 CFR § 130.7(b)(6).

*ii. TMDLs Approved*

The IDEQ removed eight waterbody segment/pollutant pairs from Category 5 based on the EPA approval of TMDLs for these waterbody/pollutant combinations. These eight waterbody/pollutant pairs were placed in Category 4a of the 2016 IR. Under the EPA regulations at 40 CFR § 130.7, the 303(d) list is an inventory of waterbodies impaired by a pollutant and requiring a TMDL. The EPA concludes that the IDEQ's removal of these eight waterbody segment/pollutant pair from the 303(d) list with an EPA approved TMDL is consistent with the requirements of 40 CFR § 130.7.

Between the EPA's approval of the 2014 303(d) list and the close of the public comment period for the 2016 303(d) list, the EPA approved 19 new waterbody segment/pollutant pair TMDLs. Several of the approved TMDLs were not yet placed in Category 5, and were considered 'unlisted but impaired.' Thus, they would not show up distinctly as 'delistings' in the count of waterbody segment/pollutant pairs removed from Category 5 above since they were not in Category 5 at the time of the TMDL approval, and they were placed directly into Category 4a from Categories 1-3.

*iii. Other Reasons with Good Cause*

The IDEQ removed 34 waterbody segment/pollutant pairs from Category 5 for other reasons with good cause. These removed waters are separate and distinct from the waters not listed due to WQS attainment, which were removed because they are attaining WQS. The IDEQ delisted 16 waterbody segment/pollutant pairs because the original listing was in error. The listing errors included 1) sampling data in an unrepresentative location was used to list the waterbody (e.g. below a beaver dam/complex); 2) waterbody was initially listed without data to support that determination and data/information now shows full support; 3) BURP indices not appropriately applied because waterbody was in a drought year with extreme low flow and/or is classified as intermittent; and 4) data were misapplied to the AU (i.e. not located in the AU). The IDEQ delisted 15 waterbody segment/pollutant pairs to either create consistencies in terminology, fix a duplicative listing, or correct identification of the impairment (e.g. identifying sediment as the cause of impairment instead of combined biota/habitat bioassessments). The IDEQ delisted three waterbody segment/pollutant pairs because the cause no longer applies due to assessment unit splits. Consistent with 40 CFR § 130.7(b)(6)(iv), the EPA concludes the IDEQ provided good cause for the decisions to remove these 34 waterbody segment/pollutant pairs consistent with the requirements of 40 CFR § 130.7.

#### C. Category 4b

The IDEQ previously placed four waterbody segment/pollutant pairs in Category 4b (ID17060205SL012\_02a, ID17060205SL012\_05, ID17060205SL013\_03, ID17060205SL013\_04) in the 2010 IR. This is supported by the *Bear Valley Creek 4b Justification*, which addresses fifty-one miles of stream. The 4b justification includes a schedule for implementing the pollution controls between 2010 and 2020. It includes Casner Creek stream restoration targeted for 2010 and road improvements (GRAIP-identified) targeted from 2011 to 2016. The 4b justification also included a list of planned monitoring and assessments for the reaches (Table 2.16 of the 4b). In **Appendix I** of the 2016 IR, the IDEQ provided the following update for each of the four AUs:

“This AU was monitored by BURP in 2015 and was assessed in the 2016 IR cycle using that data. The area was impacted by wildfires in 2016 and 2017 (Pioneer and Bearskin fires) and is not geared up for monitoring for the 2018 BURP season (as was originally outlined in the 4b plan). The effects of these fires [have] confounded measurement of water quality improvement.”

Given that the fires recently occurred, the goals and target dates for the 4b should be re-evaluated in the near future. The IDEQ will continue to review the progress of this 4b to ensure that improvements toward the attainment of WQS and beneficial use support continue with each listing cycle. If the IDEQ or EPA determine that such progress is not being made in future listing cycles, the AUs will be returned to Category 5.

#### **IV. Tribal Engagement**

The EPA Region 10's policy is to consult on a government-to-government basis with federally recognized tribal governments when the EPA actions and decisions may affect tribal interest.

Enclosure: U.S. EPA Review and Decision Rationale for Approval of Idaho's 2016 303(d) List

During Idaho's public comment period on the draft 303(d) list, the EPA sent letters to the following tribes to begin the coordination and consultation process: Coeur d'Alene Tribe, Kootenai Tribe of Idaho, Nez Perce Tribe, Shoshone-Bannock Tribes of Fort Hall, and Shoshone-Paiute Tribes. The EPA held an informational call for those tribes on August 9, 2018. The purpose of the call was to provide background information on the 303(d) listing process and to hear any concerns from the tribes. The Coeur d'Alene Tribe and Shoshone-Bannock Tribes were present on the call. They expressed concerns over the inclusion of Tribal waters in the IR, and that the waters had not been removed even though the issue had first been raised during the 2008 cycle. As an intermediate step towards addressing the two Tribes' concerns, the IDEQ removed the table of tribal waters that was in the draft 2016 IR for the final IR. For the final step towards removing all tribal assessments from the State's IR, the State plans to remove tribal waters during the combined 2018-2020 cycle.

When the IDEQ submitted their final 303(d) list, the EPA provided the opportunity for the same tribes to participate in a government-to-government consultation on the EPA's final action. In response, we received one request for consultation from the Coeur d'Alene Tribe on November 27, 2018. On March 13, 2019, the EPA held a consultation meeting with staff and managers at the Coeur d'Alene Tribe. As an outcome of the consultation meeting, the Tribe agreed to review the following template language which the EPA includes in its 2016 303(d) list action letter:

"In 1994, in response to a federal District Court order, the EPA published a 303(d) list for the State of Idaho which identified all impaired waters within the State, including some waters within Indian Country as defined at 18 USC § 1151. The Agency's approval of the State's 2016 Section 303(d) list does not apply to any waters, or portions thereof, that are within Indian Country. The EPA is taking no action to approve or disapprove the State's list with respect to any waters within Indian Country."

The Coeur d'Alene Tribe has agreed that this language satisfies the concerns raised during the consultation process (per email from Scott Fields on 3/28/2019). The EPA and IDEQ also acknowledge that waters falling within Indian Country will no longer have any assessment determinations, legacy or new, as of the combined 2018-2020 303(d) list.

**REFERENCES**

State of Idaho Department of Environmental Quality [IDEQ], *Water Body Assessment Guidance, 3<sup>rd</sup> Edition*, October 2016.

*2002 Integrated Water Quality Monitoring and Assessment Report Guidance* (EPA 2001)

*Information Concerning 2008 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions* (EPA 2006)