



FILE COPY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

1200 Sixth Avenue  
Seattle, Washington 98101

MAY 18 1994

Reply to  
Attn of: WD-139

Walton C. Poole, Ph.D  
Assistant Administrator, Community Programs  
Division of Environmental Quality  
Idaho Department of Health and Welfare  
1410 North Hilton  
Statehouse Mall  
Boise, Idaho 83720-9000

Re: Partial Approval of Idaho's 1994 Section 303(d) list

Dear Dr. Poole: *walt*

On February 9, 1994, the Idaho Division of Environmental Quality (DEQ) submitted a draft list of waterbodies to the Environmental Protection Agency (EPA) for review pursuant to §303(d) of the Clean Water Act. DEQ listed 61 water quality limited waters and the pollutants of concern. In a letter dated March 15, 1994, EPA provided DEQ comments on the draft list and requested that DEQ evaluate additional waterbodies for listing. The request was based on information EPA obtained from the basin status reports, various forest service reports, Idaho's 1992 303(d) list, the Idaho Lake Water Quality Assessment Report, March 1993, and other references. On April 11, 1994, EPA received DEQ's 1994 final 303(d) list of 62 waterbodies. Pursuant to 40 C.F.R. § 130.7(d), EPA hereby approves Idaho's decision to list those 62 waterbodies.

However, in light of the U.S. District Court's April 14, 1994 decision in Idaho Sportsmen's Coalition, et al. v. Carol M. Browner, et. al., Idaho's 1994 303(d) listing decision needed to consider information concerning the support of beneficial and existing uses contained in the reports and sources specified in EPA's March 14 letter by either listing the waters identified in these reports or setting forth a rational basis for the failure to do so. Despite dramatic improvement in the State's listing process, these requirements were not fully met. Therefore, while EPA is approving Idaho's listing of 62 waterbodies on its final 1994 303(d) list, EPA is disapproving the failure of the State, without sufficient justification, to list all water quality limited segments on its 1994 list. On May 16, 1994 EPA will propose for promulgation a supplemental 303(d) list containing those segments to be added to Idaho's final 1994 303(d) list.

EPA realizes and appreciates Idaho's tremendous effort in

developing its 1994 303(d) list. Although EPA could only grant partial approval of DEQ's 1994 303(d) list, we are confident that by working with DEQ, a 303(d) list will be established reflecting the best available information on Idaho's water quality. We look forward to receiving your comments on EPA's supplemental list. A copy of EPA's proposed supplemental list and the public notice describing the comment process is enclosed. If you have any questions or would like to discuss these issues, please contact me at (206) 553-1793 or Rick Albright at (206) 553-8514.

Sincerely,



Charles E. Findley  
Director, Water Division

Enclosures

PUBLIC NOTICE  
U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 SIXTH AVENUE  
SEATTLE, WASHINGTON 98101

I. NOTICE OF AVAILABILITY OF, AND REQUEST FOR PUBLIC COMMENTS ON, THE U.S. ENVIRONMENTAL PROTECTION AGENCY'S (EPA) PROPOSED WATER QUALITY-LIMITED SEGMENT (303(d)) LIST FOR THE STATE OF IDAHO AS REQUIRED UNDER THE CLEAN WATER ACT.

II. BACKGROUND INFORMATION

Section 303(d) of the Clean Water Act and EPA regulations require each State to submit a list of waters that are not expected to attain or maintain applicable water quality standards solely through the implementation of technology-based or similar controls. Each list shall a) identify water quality-limited waters requiring Total Maximum Daily Loads (TMDLs), b) identify the pollutants causing the impairment, and c) include a priority ranking of waters for which TMDLs are required. Each state must submit a list to EPA under section 303(d) every two years.

In August 1992, the State of Idaho (Idaho) submitted to EPA its list of 31 water quality-limited waterbodies. In February 1993, EPA issued a conditional approval of Idaho's list. In July 1993, the Sierra Club Legal Defense Fund, representing the Idaho Sportsmen's Coalition and the Idaho Conservation League (plaintiffs) filed suit against EPA, alleging (1) that EPA's conditional approval of what the plaintiffs considered to be an inadequate 303(d) list from Idaho was arbitrary and capricious, and (2) that EPA's failure to promulgate an adequate list under section 303(d) violated the Clean Water Act. The plaintiffs sought an order directing EPA to promulgate a 303(d) list for Idaho and to establish TMDLs for these water quality-limited segments. EPA issued a final approval of Idaho's 1992 303(d) list on August 18, 1993.

III. ORDER ON PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

On April 14, 1994, the U.S. District Court for the Western District of Washington issued a decision in which it held that EPA had acted arbitrarily and capriciously in approving under section 303(d) an underinclusive list of Idaho waters. As clarified by an order dated May 5, 1994, the court directed EPA to propose for public comment a 303(d) list for Idaho, consistent with section 303(d), within 30 days of the ruling. The court allowed EPA, in proposing such list, to consider any new list submitted by Idaho. EPA did consider the 1994 303(d) list

submitted by Idaho on April 8, 1994, but found that it failed to include, without sufficient justification, all of Idaho's water quality-limited segments. While EPA is approving Idaho's decision to include the 62 waterbodies identified on its 1994 303(d) list, EPA is disapproving the failure of the State, without sufficient justification, to list all water quality-limited segments on that list. Therefore, by this action, EPA is proposing to add 788 waterbodies to Idaho's 1994 303(d) list. EPA's final list, together with Idaho's approved list, will constitute the final 1994 303(d) list for the State of Idaho.

### III. HOW TO OBTAIN A COPY OF, AND SUBMIT COMMENTS ON, EPA'S PROPOSED SUPPLEMENT TO THE 1994 303(d) LIST FOR IDAHO

Copies of EPA's proposed supplement to the 1994 303(d) list for the State of Idaho can be viewed at the EPA Region 10 Library, 1200 Sixth Avenue, Seattle, Washington 98101, or can be obtained by contacting Ms. Connie Robinson, WD-139, U.S. EPA, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101 (telephone 206/553-1086), or the Idaho Operations Office, 422 West Washington Street/IOO, Boise, Idaho 83702 (telephone number 208/334-1450).

Persons wishing to comment on EPA's proposed supplement to the 1994 303(d) list may do so by submitting written comments to the attention of Alan Henning, Water Division, M/S WD-139, U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. EPA is particularly soliciting comments on waterbodies proposed for listing solely on the basis of exceeding forestry plan standards.

Comments must be received postmarked no later than June 16, 1994. All comments should include the name and address of the commenter, the specific waterbodies to which the comments are directed, and a statement of the relevant facts upon which the comments are being based.

U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 SIXTH AVENUE  
SEATTLE, WASHINGTON 98101

PROPOSED DECISION OF  
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
ON LISTINGS UNDER  
SECTION 303(d) OF THE CLEAN WATER ACT  
REGARDING  
THE STATE OF IDAHO

I. DESCRIPTION OF SECTION 303(d) OF THE CLEAN WATER ACT

Section 303(d) of the Clean Water Act and EPA regulations require each State to submit to EPA a list of waters that are not expected to attain or maintain applicable water quality standards solely through the implementation of technology-based or similar controls. Each list shall (a) identify these water quality-limited waters, (b) identify the pollutants causing the impairment, (c) include a priority ranking of waters for which Total Maximum Daily Loads (TMDLs) are required, and (d) identify the waters targeted for TMDL development in the next two years. As a tool for achieving water quality standards in a particular waterbody, a TMDL establishes the allowable pollutant loadings or other quantifiable parameters for that waterbody and allocates to each contributing point and nonpoint source a portion of that load. The information regarding load capacity and allocations is then used to establish the controls necessary to achieve the applicable water quality standard. Each State must submit a section 303(d) list to EPA every two years.

In developing the list, States are required under EPA's regulations to consider all existing and readily available water quality-related data and information. At a minimum, this information includes reports and assessments prepared under sections 305(b) and 319 of the Clean Water Act, calculations or predictions from water quality modeling, and governmental, academic and public reports. In addition, States should consult databases (such as TRI and STORET), CWA section 304(1) and 314(a) lists and assessments, and fish consumption advisory data, as well as their best professional judgment.

EPA shall either approve or disapprove the State's section 303(d) listing decisions no later than 30 days from the date the list is submitted. If EPA determines that a State list meets all of the requirements of section 303(d), EPA will notify the State of its approval in writing. If EPA determines that a State list, in whole or in part, fails to meet the requirements of section 303(d), EPA will approve those portions of the list satisfying the Clean Water Act and will disapprove the remainder. If EPA

disapproves all or any part of a State's section 303(d) submission, EPA will develop and propose a list necessary to satisfy section 303(d), take public comment on its proposed list, and after considering such comment promulgate the list in final form as a replacement for or, in the case of a partial approval, as a supplement to the State's submission. The final section 303(d) list for the State then becomes part of the State's water quality management plan.

## II. EPA DECISION ON STATE SUBMITTAL

In August 1992, the State of Idaho submitted to EPA a list of 31 water quality-limited waterbodies for the purpose of satisfying section 303(d). In February 1993, EPA issued a conditional approval of Idaho's list. In July 1993, the Sierra Club Legal Defense Fund, representing the Idaho Sportsmen's Coalition and the Idaho Conservation League, filed suit against EPA challenging Idaho's list as inadequate. The suit alleged that EPA's conditional approval of Idaho's section 303(d) list was arbitrary and capricious and asserted that EPA's failure to promulgate an adequate list under section 303(d) violated the Clean Water Act. The plaintiffs sought an order directing EPA to promulgate a 303(d) list for Idaho and to establish TMDLs for the water quality-limited segments so identified. EPA issued a final approval of Idaho's 1992 303(d) list on August 18, 1993.

On April 8, 1994, Idaho submitted its 1994 section 303(d) list to EPA. This list identified 62 waters as water quality-limited.

On April 14, 1994, the U.S. District Court for the Western District of Washington issued a decision in which it held that EPA had acted arbitrarily and capriciously in approving under section 303(d) an underinclusive list of Idaho waters. As clarified by an order dated May 5, 1994, the court directed EPA to propose for public comment a new list for Idaho, consistent with section 303(d), within 30 days of the ruling. The court allowed EPA, in proposing such list, to consider any new section 303(d) list submitted by Idaho.

By letter dated May 13, 1994, EPA informed the State of Idaho that it approved the State's decision to include the 62 waterbodies identified in its 1994 section 303(d) list. EPA also informed the State that it disapproved Idaho's failure to include on this list, without sufficient justification, all of Idaho's water quality-limited waterbodies.

Accordingly, EPA has developed a list of water quality-limited waters that it believes should be included in the 1994 section 303(d) list for the State of Idaho. Pursuant to the court's order and in accordance with section 303(d) and EPA's regulations, EPA hereby proposes to add 788 waterbodies to

Idaho's 1994 303(d) list. After responding to public comments on the proposed supplemental list, EPA will issue a final list. EPA's final list, together with Idaho's approved list, will constitute the final 1994 303(d) list for the State of Idaho.

In developing this list, EPA reviewed the State of Idaho's Basin Status Reports and Appendix D to the 1992 305(b) report, which were prepared by the Idaho Division of Environmental Quality. EPA proposes for listing all waters for which, according to these reports, beneficial uses are threatened or partially or entirely impaired. EPA also reviewed monitoring reports prepared by the United States Forest Service and proposes for listing all waterbodies which were identified as not meeting Forest Plan standards. EPA also reviewed Idaho's Lake Water Quality Assessment Report, 1993, to identify lakes that were water quality-limited.

EPA solicits comment on its proposal to list the waters identified in the attached list. As described in the Public Notice, comments must be postmarked by June 16, 1994. EPA specifically solicits comment on waterbodies proposed for listing solely on the basis of exceeding forestry plan standards. EPA is aware that the exceedence of forestry plan standards may not necessarily correlate directly with the exceedence of state water quality standards. In order to determine if the state water quality standards are being met, EPA would appreciate any specific data supporting or refuting this correlation.

May 13, 1994

Date

Charles E. Findley

Charles E. Findley  
Director, Water Division