

**Response to Comments**  
**on**  
**Draft Total Maximum Daily Loads**  
**for the**  
**Upper Canadian River Watershed**  
**and**  
**Turkey Creek Watershed**  
**Comment Period August 11, 2006 – September 11, 2006**  
**Prepared by: USEPA Region 6**  
**September 29, 2006**

Upper Canadian River Watershed TMDL (23 TMDLs)

Turkey Creek Watershed TMDL (7 TMDLs)

Comment Period: August 11, 2006 – September 11, 2006

1. Memorandum to Diane Smith (EPA) from Mel A. McFarland (Tinker Air Force Base) dated August 24, 2006.
2. Letter from Gill (Tinker Air Force Base) to Craig (Oklahoma Department of Environmental Quality) dated July 20, 2006.
3. Comments submitted by Tinker Air Force Base for the August 23<sup>rd</sup> Public Meeting on the Proposed Upper Canadian River Watershed TMDLS
4. Memorandum to Diane Smith (EPA) from Cathy R. Sheirman (Tinker Air Force Base) dated August 31, 2006.
5. Memorandum to Diane Smith (EPA) from Mel Mc Farland (Tinker Air Force Base) dated September 11, 2006.
6. Letter received from Cloxin (Oklahoma Conservation Commission) to Smith (EPA) dated September 11, 2006.
7. Comments received from Oklahoma Farm Bureau (Peak) to Smith (EPA) dated September 11, 2006.

**Memorandum to Diane Smith (EPA) from Mel A. McFarland (Tinker Air Force Base) dated August 24, 2006, and Memorandum to Diane Smith (EPA) from Cathy R. Sheirman (Tinker Air Force Base) dated August 31, 2006.**

1. The commenter objects to the use of load-duration methodology and the process used by EPA for developing TMDLs in Oklahoma and that although the TMDL in question does not impact them directly, the commenter is concerned about EPA's use of the load-duration curve methodology to develop the TMDL.

Response: The TMDL calculations presented in this report are derived from load duration curves. Load duration curves (LDC) facilitate rapid development of TMDLs and as a TMDL development tool, are effective at identifying whether impairments are associated with point or nonpoint sources. The load duration curve methodology has been used successfully on a National and Regional level for a wide range of pollutants. Nationally over 4000 TMDLs for bacteria have been developed using the load duration curve and other methodologies. Region 6 has established TMDLs for bacteria using the LDC methodology in Louisiana and Arkansas.

2. The commenter refers to a letter sent to the Oklahoma Department of Environmental Quality in response to the draft TMDL for the North Canadian River. The commenter states it opposes the draft TMDLs for the same reasons outlined in the referenced letter and asks that EPA take the actions requested in the letter.

Response: The issues raised in the letter will be addressed in subsequent responses.

3. Commenter states that because the load duration curve method as used in Oklahoma is based on estimates; only one station with stream gage records was used to develop the TMDLs; the TMDLs do not consider background sources; identify specific sources, differentiate between human and animal sources of bacteria; and do not link the sources to actual sources levels of pathogens. The commenter states that the TMDLS are not based on sound science and should not be established.

Response: The requirements for TMDLs are outlined at 40 CFR 130.7. EPA has determined that the load duration curve methodology does meet the requirements of the regulations and TMDLs have been developed nationwide using the load duration curve methodology for bacteria. A TMDL is required to consider point sources (Waste Load Allocation) and non point sources (Load Allocation). Identification of specific individual sources in these categories is not required. EPA agrees that the information the commenter has mentioned would be beneficial and could be developed as the TMDL is implemented. The TMDL establishes the amount of loading of a particular pollutant that a waterbody can assimilate without violating the state's water quality standards.

4. The commenter states that there are processes to involve various stakeholders in determining the individual sources of bacteria in the watershed and that the TMDL does not do this.

Response: As stated in response to the previous comment, the TMDL establishes the loading of a pollutant that a given waterbody can assimilate without violating the state's water quality standards. After a TMDL has been established for a pollutant, stakeholder groups can be formed to determine

how to implement the TMDL and restore the watershed to meeting the state's water quality standards.

5. The commenter requests that there be a moratorium on establishing TMDLs in Oklahoma using the load-duration methodology.

Response: As stated in previous responses, EPA believes that the load duration curve methodology is appropriate for developing TMDLs for pathogens in Oklahoma.

6. The commenter raised a number of process and procedure concerns used to establish TMDLs in Oklahoma.

a. The commenter stated that EPA did not meet the requirements of 40 CFR Part 25 in regards to public meetings. 40 CFR 25.5(b) and (c) (applicable to 40 CFR 25.6 (Public Meetings)) require that an agency holding a public meeting must give notice of the meeting at least thirty days prior to the meeting and make documents available to the public for review thirty days prior to the meeting. The commenter cited the Federal Register Notice of the draft TMDLs and public meeting was published on August 11, 2006, and the public meetings were held on August 25 and 26, 2006.

Response: EPA acknowledges that it did not give public notice of the meeting thirty days before the meeting. Instead, the public received 12 to 13 days notice. Notice was given by means of publication in *Daily Oklahoman* on August 11, 2006, and also in the *Enid News, Tulsa World, Weatherford Daily* on August 12, 2006. The public meeting for Upper Turkey Creek took place on August 24, 2006, and the meeting for the Upper Canadian River took place on August 23, 2006. EPA is not aware that any person was unable to attend either meeting or offer comments on the TMDLs as a result of the fact that it received only 12 to 13 days' notice. Indeed, EPA considered all comments received after the date of the meetings up to the date of this approval. Therefore, to the extent EPA did not give 30 days notice of the public meetings, the failure to do so was harmless error.

Moreover, neither the CWA nor the TMDL regulations require EPA to hold a public meeting, or expressly address the question of how much notice EPA must give before a public meeting on a TMDL that EPA is establishing under its discretionary authority when a state's pace of TMDL development is deemed to be too slow. The TMDL regulations at 130.7(c)(1)(ii) say that TMDL calculations are subject to public review as defined in the State's CPP. While this requirement applies when states are establishing TMDLs, it is not clear that the same schedule applies when EPA is establishing the TMDL in the first instance. When EPA establishes a TMDL after it disapproves a State's TMDL, 130.7(d)(2) says only that EPA shall "promptly issue a public notice seeking comment." The regulation does not say how long that notice and comment period should last, nor does it require a public meeting at all.

b. The commenter stated that EPA's Federal Register Notice was defective because it did not mention the meeting agenda, time or location. In addition, EPA's website did not contain any information about the public meeting and due to this the commenter was not able to adequately prepare for the public meeting.

Response: See previous response. EPA is not required to hold a public meeting as part of the public participation process when establishing TMDLs. Further, the commenter was clearly able to submit comments to EPA in writing and was therefore not prejudiced by receiving 12 to 13 days notice of the public meetings.

c. The commenter expressed concern about the length of the public comment period being too short. The commenter stated that EPA should follow the requirements of Oklahoma's Continuing Planning Process (CPP) which require a thirty day comment period after a public meeting has been held.

Response: See response 6(a). EPA does not agree that the state's CPP schedule applies when EPA is establishing the TMDL in the first instance. When EPA establishes a TMDL after it disapproves a State's TMDL, 40 CFR § 130.7(d)(2) says only that EPA shall "promptly issue a public notice seeking comment." The regulation does not require a public meeting at all, nor does it require that the notice EPA provides be extended as a result of any public meeting that may occur. EPA provided thirty days notice of the comment period by publication in the Federal Register. 71 FR 46227 (August 11, 2006). As noted above, the commenter was clearly able to take advantage of this thirty-day comment period and was therefore not prejudiced.

d. The commenter stated that EPA is interfering in a delegated state program and that EPA was doing this in order to meet EPA's internal deadlines.

Response: The commenter implies that the TMDL program is a delegated state program. The TMDL regulations and numerous legal actions taken against EPA have established that EPA has the ultimate responsibility for ensuring that TMDLs are established in a timely manner. EPA and the State of Oklahoma have jointly agreed that EPA would establish the bacteria TMDLs for the Upper Canadian River and Turkey Creek watersheds.

**Letter from Gill (Tinker Air Force Base) to Craig (Oklahoma Department of Environmental Quality) dated July 20, 2006**

The following comments were submitted on the draft TMDL for pathogens on the North Canadian River prepared by ACOG.

1. Commenter stated that the public record reflects that the TMDL will be implemented without adequate background source analysis or MS4 monitoring.

Response: The bacteria TMDLs for the Upper Canadian River and the Turkey Creek watersheds do not have an implementation component. Identification of background sources and loadings is not a required element of a TMDL. The level of information the commenter suggests that is needed for preparation of the calculation of the maximum allowable load meeting the water quality standard is not required. The information suggested by the commenter is more appropriate for a detailed implementation plan. The assimilative capacity of the stream is allocated between point and nonpoint sources. The allocation to point and nonpoint sources is the responsibility of the State, under the Water Quality Management Plan.

2. Commenter states that the goals for reduction are unattainable and that the TMDL will impose unnecessary and increasingly expensive BMPs without regard to hardship or likelihood of success.

Response: Percent reduction is informational in nature. The TMDL sets the load, not specific BMPs. The TMDL review criteria have no provisions for establishing loads based on expense or hardship. This comment addresses implementation which is not part of the TMDLs that are being established.

3. The commenter expresses a concern that unless background levels of pathogens are considered in the TMDL mandated BMPs and reduction goals the commenter and other MS4 permit holders impacted by the TMDL will be required to fund additional clean-up of pathogens from sources over which they have no control.

Response: The impaired segments do not include any MS4 permittees and therefore the question is moot in regard to these TMDLs. EPA established TMDLs may contain references to specific BMPs as a guide to be used in implementing the TMDL. Although EPA regulations do not require that implementation be included in the TMDL report, EPA strongly supports TMDLs that do include an implementation component. Additionally, EPA notes that a permittee is only required to demonstrate that their discharge will meet the water quality standard criteria or their individual wasteload allocation and is not responsible for the clean-up of discharges that the permittee has no control over.

5. The commenter states that the proposal is not in compliance with Oklahoma statutes or Federal Water Pollution Control Act.

Response: The TMDLs are being established by EPA and meet the requirements of the Clean Water Act.

6. The commenter raised concerns about Oklahoma's administrative procedures in regards to establishing TMDLs.

Response: The comment is moot due to the fact that EPA is following Federal administrative procedures in establishing the TMDLs.

**Comments submitted by Tinker Air Force Base during the August 23<sup>rd</sup> Public Meeting on the Proposed Upper Canadian River Watershed TMDLs**

1. The commenter questions if the background levels of bacteria in the Canadian River are being exceeded prior to entering Oklahoma.

Response: Segment 520620050010\_00 is the first segment of the Canadian River in Oklahoma and is not listed on the 2002 303(d) list as being impaired for pathogens. The next downstream segment is 520620040010\_00 and it is also not listed on the 2002 303(d) list for pathogens. Segment 520620030010\_00 the next downstream segment is listed on the 2002 303(d) list as being impaired by pathogens.

2. The commenter states that the waterbodies designated use is inappropriate and should be based on land use. The commenter states that primary or secondary body contact recreation uses are inappropriate.

Response: The designated uses of the waterbodies are determined by the State of Oklahoma. The state has determined that the waterbodies have a use of primary contact recreation. The State of Oklahoma does have procedures for removing and changing uses for waterbodies. EPA refers the commenter to the Oklahoma Water Resources Board for further information on this process.

3. Commenter questioned the statement “only a small fraction of these fecal coliform are expected to represent loading into waterbodies,” referring to the sources listed in (Tables 3-6, 3-7). The commenter notes that the watersheds are primarily agricultural and no evidence was presented to support this assertion.

Response: Tables 3-6 and 3-7 give estimates of the magnitude of the loading in the watersheds from livestock. This information is presented for informational purposes only; the loadings in the TMDL were derived from the sample data collected in the waterbodies.

4. The commenter states the assumption that all septic tanks were considered to be failing is not a reasonable assumption.

Response: The information on septic tanks was again for informational purposes only. The actual TMDLs were calculated from sample data collected in the waterbodies.

5. Commenter states that urban/suburban rates of pet ownership are only gross estimates of pets in rural areas which tend to have more dogs and cats per capita.

Response: Comment noted.

6. Commenter questions if it is valid to assume that the entire fecal load from dogs and cats reaches the waterbodies in question.

Response: Table 3-13 gives an estimate of the possible magnitude of the loadings from pets. As stated in previous responses, the TMDL is based on the actual sample data collected in each waterbody.

7. The commenter suggests that Table 3-13 has too many assumptions to be even remotely accurate.

Response: As stated in our responses the estimated loadings in Table 3-13 were not used to calculate the TMDLs. Table 3-13 is an attempt to identify sources of pollution that may need to be addressed during the implementation of the TMDLs.

8. The commenter states that there are no valid stream gage stations in the watershed to base the watersheds' flow duration curves on. Real flow data is required to calculate pathogen loads. The commenter questions if the primary body contact recreation use is correct given the extremely low flows of a number of the waterbodies.

Response: Flow duration curves were estimated from measured data from just downstream of segment 520620020010\_00 and from stream gage data from a station on Deer Creek. The use of data from other waterbodies to develop flow curves for a waterbody has been used by EPA and state agencies to develop TMDLs in the absence of flow data for the impaired waterbody. EPA again defers to the Oklahoma Water Resources Board on the issue of the appropriateness of the primary body contact recreation use designation for the waterbodies.

9. The commenter states that flow data from downstream of the study area was used to develop the TMDLs and has asked why the draft report does not contain a flow curve for the monitoring station and if there is any monitoring data available for that site.

Response: A flow curve for the monitoring station was not deemed to be necessary for the project and therefore was not prepared. USGS gage 07228500 is located in segment OK520610020150\_00 which has been placed on the on 2002 303(d) list as being impaired by pathogens. The development of a TMDL for this segment is beyond the scope of this report; however EPA expects a pathogen TMDL to be developed for this segment in the future.

10. Commenter states that due to the lack of actual stream gage data in the watersheds, identification of the actual sources of the impairment, the use of literature assumptions and other gross assumptions, the waterbodies should not have been classified as Category 5 waterbodies.

Response: The waterbodies were placed in Category 5 based on actual measurements and monitoring data collected from the specific streams, not assumptions. The decision to place the waterbodies in question on the 303(d) list was reviewed by EPA and the public. This information and subsequent data that has been developed was considered in the process of establishing these TMDLs.

**Memorandum to Diane Smith (EPA) from Mel Mc Farland (Tinker Air Force Base) dated September 11, 2006.**

1. The commenter mentions the letter sent from Miguel Flores (EPA) to Jon Craig (ODEQ) and has included it as an attachment. The commenter states that the letter indicates EPA is taking over the public participation process for these TMDLs, and that EPA will establish these TMDLs in place of action by ODEQ. The stated reason for this action is to complete the TMDL process by 30 Sep 2006, a deadline internal to EPA.

Response: The letter states that Oklahoma had committed to establishing 38 TMDLs by September 30, 2006, and had, to date, only established 2 TMDLs and that Oklahoma indicated that it would not be able to meet its commitment of establishing 38 TMDLs by September 30, 2006. EPA strongly believes that significant progress in establishing TMDLs in Oklahoma needs to be made this fiscal year. Due to these reasons and not a desire to avoid public participation EPA chose to establish these 30 TMDLs.

2. The commenter states that EPA is deliberately avoiding public participation by taking this action.

Response: As stated above, EPA has determined that significant progress in establishing TMDLs in Oklahoma needs to be made by September 30, 2006, and that in order for progress to be made, EPA has chosen to establish the TMDLs in question.

3. Such action is contrary to federal case law. The court in *Environmental Defense Fund, Inc. v. Costle*, 657 F.2d 275 (D.C.Cir. 1981), interpreted subsections (c)(1),(c)(2)(A) and (c)(4)(b) of Section 303 of the Clean Water Act (CWA), 33U.S.C. Section 1313(c)(1), (c)(2)(A) and (c)(4)(B)(copy of case attached). Those sections require the states to set water quality standards, and submit them to EPA for review, but they also allow EPA to set water quality standards where new or revised standards are necessary to meet the requirements of Subchapter III. The court stated as follows:

[I]t is logical that EPA should refrain from acting until the states have completed an initial effort to update the standards as they deem appropriate. *Environmental Defense Fund v. Costle*, 657 F.2d 275 at 294 (footnote omitted).

Although the court was examining subsection (c) of Section 303, the analysis is equally applicable to subsection (d) which immediately follows. This portion of Section 303 requires states to, among other things, establish TMDLs and submit them to EPA for review. The state of Oklahoma is making progress toward establishing TMDLs for the Canadian River or Turkey Creek. The EPA letter reflects that the TMDLs for these watersheds are already in draft form and that EPA has them in hand. Paragraph three of the letter states:

Region 6 has recently draft TMDL reports addressing impairments for pathogens and/or turbidity in Upper Canadian River and the Turkey Creek watersheds from DEQ.

Since Oklahoma is making adequate progress toward establishing TMDLs for these watersheds, under Costle, EPA should refrain from acting until Oklahoma has completed its initial effort to establish these TMDLs.

Response: The commenter has stated its opinion that Oklahoma is making adequate progress toward establishing the TMDLs in question. EPA does not concur with this opinion. In the letter quoted by the commenter, EPA noted that the state of Oklahoma informed EPA that the state would not be able to meet its commitment to EPA to establish the TMDLs by the date agreed to by both agencies of September 30, 2006, and because of this reason EPA would proceed with establishing the TMDLs.

The commenter cites the court decision on Costle which states that EPA should refrain from acting to establish water quality standards in lieu of the state. The commenter suggests that this decision based on Section 303 (c) of the Clean Water Act is applicable to Section 303 (d) of the Clean Water Act. EPA does not concur with this conclusion and EPA has and continues to establish TMDLs for impaired waters in both Arkansas and Louisiana.

4. This action is also contrary to stated Congressional policy. As the court in Costle noted:

This [Section 101(b) of the CWA] recognizes the Congressional policy of placing “primary” responsibility with the state “to prevent, reduce, and eliminate” water pollution. *Id.*

Response: The commenter states that EPA’s actions are contrary to Congressional policy. EPA does not concur. The commenter cites that primary responsibility has been give to the states to prevent, reduce and eliminate water pollution. The TMDLs in question establish the maximum loading for each waterbody in the report and partition the loading between point and non point sources; they do not prevent, reduce or eliminate water pollution. The implementation of the TMDLs, which will be the state’s responsibility, will prevent, reduce and eliminate water pollution.

5. Under the facts set out in this memorandum, EPA does not have the statutory authority to establish TMDLs in place of Oklahoma. A comparison of subsections (c) and (d) of Section 303 reveals why. Subsection (c) provides for the states to review, modify and adopt water quality standards and submit them for review to EPA, and subsection (c)(4)(B) has an additional provision for EPA to set water quality standards in any case where EPA determines a new or revised standard is necessary. However, subsections (d)(1)(C) and (d)(2) require the states to set TMDLs and submit them to EPA for approval. Subsection (d)(2) allows EPA to establish TMDLs in place of a state only when it has disapproved a TMDL. There is no language in the Federal Register notice for these TMDLs or in the EPA letter that disapproves Oklahoma’s draft TMDLs for the Upper Canadian or Turkey Creek watersheds. Rather, EPA intends to establish these same draft TMDLs as final. Thus, EPA has not disapproved Oklahoma’s draft TMDLs and has not statutory authority to take over the public participation process or to establish the TMDLs for these watersheds.

Response: EPA does not concur that EPA can only establish a TMDL after it has disapproved a TMDL.

Subsection (d)(2) requires EPA to establish a load if the agency has disapproved the load. In addition, however, EPA has discretionary authority to issue TMDLs. Section 303(d) of the CWA does not expressly address EPA’s role if a state fails to submit TMDLs or does not submit final

TMDLs on a sufficiently expeditious schedule. See 33 U.S.C. § 1313(d). However, the most reasonable reading of section 303(d)(2), including its emphasis on timely development of TMDLs, coupled with the structure and purpose of the CWA, is that Congress granted EPA the authority to develop TMDLs when a state's pace of TMDL submission is deemed by EPA to be too slow. When a statute administered by EPA is silent as to the agency's responsibility, the Court will defer to the agency's reasonable interpretation. *Monongahela Power Co. v. Reilly*, 980 F.2d 272, 276, 279 (4th Cir. 1992).

The main objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. 33 U.S.C. § 1251(a). Congress intended TMDLs to play an important role in achieving this objective, and it intended that they be brought to bear within the statutory timeframes. See 33 U.S.C. § 1313(d) (imposing short deadlines for state and EPA action). Thus, while states have primary responsibility for many CWA programs, see 33 U.S.C. § 1251(b), including the TMDL program, it would be anomalous and contrary to the objectives of the CWA if states could stymie the implementation of section 303(d) simply by not submitting TMDLs as required by Congress. See, e.g., *Scott v. City of Hammond*, 741 F.2d 992, 997 (7th Cir. 1984) (stating that the court did not believe that Congress could have intended to allow the states to prevent the implementation of TMDLs through inaction). If TMDLs are not issued, achievement of water quality standards could be delayed, and the chief objective of the CWA could be thwarted.

An interpretation of section 303(d)(2) to make the state the sole authorized TMDL actor could produce absurd results. It is well-established that courts should reject readings of a statute that yield absurd results. E.g., *Public Citizen v. Department of Justice*, 491 U.S. 440, 453-54, 467 (1989); *United States v. American Trucking Ass'n, Inc.*, 310 U.S. 534, 543 (1940)

Precisely to prevent this result, EPA interprets the CWA to grant the agency the authority to establish TMDLs under some circumstances where it is not compelled to do so by the statute. In view of Congress's urgency for state action and the TMDLs' place in the statutory scheme, it would frustrate the purposes of the CWA if EPA lacked authority to do anything but sit idly by and wait to be compelled to act. As many courts have recognized, Congress expected EPA to play a key role in the TMDL program. See, e.g., *Scott*, 741 F.2d at 997. Indeed, Congress required EPA to develop and issue TMDLs if it disapproved those submitted by a state. 33 U.S.C. § 1313(d)(2). Congress failed, however, to provide explicit "definite remedies," *ICC v. American Trucking Ass'n, Inc.*, 467 U.S. 354, 357 (1984), if a state fails to submit final TMDLs in a timely manner. Therefore, in order to fill the gap left by Congress, EPA has determined that it possesses authority to develop TMDLs in these circumstances and in others (for example, to address interstate and boundary waters) where necessary to enable the agency to fulfill its statutory responsibility to administer the CWA.

The Supreme Court has made clear that section 101(d) of the CWA charges EPA with the responsibility to administer the Act, and therefore "requires [courts] to resolve any ambiguity" regarding the scope of the Administrator's authority "in favor of the Administrator." *Du Pont*, 430 U.S. at 128-29, 132. EPA's assertion of authority to develop TMDLs in the absence of sufficient state action carries out EPA's responsibility under section 101(d) to administer the CWA and to advance its purposes. EPA's interpretation therefore is entitled to deference under this long-standing principle set forth in *du Pont* and restated in *Chevron v. NRDC*, 467 U.S. 837, 842-44 & n.11 (1984) (holding that where Congress has not "directly spoken to the precise question at issue," the court should sustain an agency's interpretation that is "based on a permissible construction of the statute").

Not only is EPA's assertion of discretionary authority necessary to avoid undermining the goals of the CWA, but it is also permissible and reasonable. Section 303(d)(2) provides that states shall submit TMDLs "from time to time." Because EPA thus has the authority to set schedules, albeit

in consultation with states as required by its regulations, EPA necessarily has the authority to determine when the schedule has not been satisfied and to act when it deems appropriate. There is little point to setting a schedule if nothing happens if it is ignored.

EPA's assertion of TMDL establishment authority does not conflict with the stated policy of Congress to preserve the primary responsibilities and rights of states to eliminate water pollution. 33 U.S.C. § 1251(b). EPA's discretionary authority to issue TMDLs where the state has not done so is no greater intrusion on states' rights than is EPA's ability to rewrite an inadequate state TMDL, 33 U.S.C. § 1313(d)(2), or to withdraw a state NPDES program and issue permits itself if the state fails to comply with statutory requirements. See 33 U.S.C. § 1342(c)(3). Congress gave EPA the authority to act to ensure progress in cleaning up the nation's waters where state action is inadequate to do so. In light of EPA's ubiquitous role under the CWA, silence should not be construed as disempowerment. Thus, the most reasonable reading of section 303(d)(2) is that EPA has authority to establish TMDLs where necessary to enable the agency to fulfill its statutory responsibility to administer the CWA.

We also note that the state of Oklahoma has not submitted comments objecting to this EPA action. In fact, EPA has received a letter from the Oklahoma Conservation Commission expressing their support for the TMDLs.

**Letter received from Cloxin (Oklahoma Conservation Commission) to Smith (EPA) dated September 11, 2006**

1. The commenter expressed his support of EPA establishing the TMDLs for the Upper Canadian River and the Turkey Creek Watershed

Response: EPA appreciates the comment of interest, and support of these TMDLs.

**Comments received form Oklahoma Farm Bureau (Peak) to Smith (EPA) dated September 11, 2006.**

**UPPER CANADIAN RIVER WATERSHED AND TURKEY CREEK WATERSHED TMDLS**

1. Oklahoma Farm Bureau points out that there is an incorrect statement on page 5-46 of the Upper Canadian River Watershed and page 46 of the Turkey Watershed TMDLs. The statement in question is

“Nonpoint source pollution is regulated by the Oklahoma Conservation Commission.” The commenter states that the Oklahoma Department of Agriculture Food and Forestry has jurisdiction over nonpoint source runoff from agricultural crop production, agricultural services, livestock production, silviculture, feed yards, livestock markets and animal waste. Other nonpoint source jurisdiction is divided among the Oklahoma Department of Environmental Quality, Oklahoma Corporation Commission, and the Department of Mines.

The Oklahoma Conservation Commission (OCC) is responsible for the monitoring, evaluation and assessment of waters to determine the condition of streams and rivers being impacted by nonpoint source pollution. The OCC is the technical lead agency for nonpoint source categories as defined in Section 319 of the federal Clean Water Act or other subsequent federal or state nonpoint source programs, except for activities related to industrial and municipal storm water or as otherwise provided by state law.

Response: The final TMDL report has been changed to reflect this comment.

2. Oklahoma Farm Bureau does not concur that TMDLs must be based on attainment of the current standards. They’re concerned that when waterbodies in remote areas of the state with sparse population are labeled as impaired, either the beneficial use may be inappropriate, and/or the standard is questionable. For example, in some areas of the Upper Canadian watershed the biggest contributors of bacteria to the waterbodies will be wildlife and cattle.

They support Use Attainability Analyses (UAA) being performed on the creeks in the Upper Canadian River watershed and the Turkey Creek Watershed to verify whether Primary Body Contact Recreation is the appropriate beneficial. They request that UAAs be performed for:

Upper Canadian River		Turkey Creek	
OK520620010120	Bear Creek	OK620910060010	Turkey Creek
OK520620020090	Trail Creek	OK620910060020	Little Turkey
	Creek		
OK520620030020	Lone Creek	OK620910060030	Buffalo Creek
OK520620030050	Red Trail Creek	OK620910060110	Clear Creek
OK520620030110	Red Creek		
OK520620040050	Hackberry Creek		
OK520620050160	Commission Creek		
OK520620060010	Deer Creek		

Response: The revision of the Oklahoma Water Quality Standards to address the issues raised by the commenter is beyond the scope of the proposed action. Although UAAs can be done to verify if Primary Body Contact Recreation is the appropriate beneficial use, however, that also is an action outside the scope of the proposed action. EPA refers the commenter to the Oklahoma Water Resources Board for further information on this process. Finally, EPA's regulations and procedures require that TMDLs be developed to meet the current water quality standard and cannot be based on a less stringent standard.