

**GTHT - 1**

**NPDES**

## Chavez, Carl J, EMNRD

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**From:** Chavez, Carl J, EMNRD  
**Sent:** Tuesday, September 11, 2012 9:37 AM  
**To:** 'Janney, David'  
**Cc:** Dade, Randy, EMNRD; Shapard, Craig, EMNRD; Sanchez, Daniel J., EMNRD; VonGonten, Glenn, EMNRD; Brooks, David K., EMNRD  
**Subject:** RE: Lightning Dock Geothermal Project (GTHT-001) August 30, 2012 Voicemail Message Regarding NPDES Permit

David:

I have highlighted text below that does not require US Waters of State to be related to commerce. I think the NOI for an NPDES Permit coupled with communication with EPA R6 should set the path forward for OCD to receive input from the EPA in the form of correspondence in the matter.

In addition, the OCD informed you that it must also consider 20.6.4 NMAC in the matter as the creek is considered intrastate waters of the state and could be interstate as well due to the proximity of the Arizona Border.

Thank you.

Carl J. Chavez, CHMM  
New Mexico Energy, Minerals & Natural Resources Department  
Oil Conservation Division, Environmental Bureau  
1220 South St. Francis Drive, Santa Fe, New Mexico 87505  
Office: (505) 476-3490  
E-mail: [CarlJ.Chavez@State.NM.US](mailto:CarlJ.Chavez@State.NM.US)  
Website: <http://www.emnrd.state.nm.us/ocd/>

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**From:** Janney, David [mailto:[david.janney@amec.com](mailto:david.janney@amec.com)]  
**Sent:** Monday, September 10, 2012 4:30 PM  
**To:** Chavez, Carl J, EMNRD  
**Cc:** Dade, Randy, EMNRD; Shapard, Craig, EMNRD  
**Subject:** RE: Lightning Dock Geothermal Project (GTHT-001) August 30, 2012 Voicemail Message Regarding NPDES Permit

Thank you Carl:

I followed up with Jenelle Hill at EPA Region 6, no response yet.

I am still curious as to how OCD feels there are “Waters of the US” in the Animas Valley according to what I have read in 40 CFR

**§ 122.3 40 CFR Ch. I (7–1–12 Edition)**

*Waters of the United States or waters of the U.S. means:*

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate "wetlands;"

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or (please notice the terms "or" and not "and") could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;

(f) The territorial sea; and

(g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. [See Note 1 of this section.]

Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

Additionally I am curious as to how you can classify our geothermal fluid as fresh according to the NMAC WQCC and yet classify it as a regulated waste when brought to the surface during flow testing?

Regards,

David

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**From:** Chavez, Carl J, EMNRD [mailto:Carl.J.Chavez@state.nm.us]

**Sent:** Thursday, September 06, 2012 1:29 PM

**To:** Janney, David

**Cc:** Sanchez, Daniel J., EMNRD; VonGonten, Glenn, EMNRD; Shapard, Craig, EMNRD

**Subject:** RE: Lightning Dock Geothermal Project (GTHT-001) August 30, 2012 Voicemail Message Regarding NPDES Permit

David:

Hi. I recommend that you comply with the OCD response and directive to contact the EPA for official documentation in writing. I provided the specific watershed information that I think applies so you could share it with the EPA in order to receive official documentation. I think it is important to convey the thermal nature of the geothermal discharges, water quality information, and treatment additives under the OCD Discharge Permit to the EPA.

These type of issues will likely be communicated between the Federal and State Government Agencies to derive an official response and "path forward" based on the details of the project, etc. Of course, if you received a letter from the EPA that states outright what you conveyed in a voicemail message, the OCD would still likely follow-up with the EPA to document the EPA letter for the Administrative Record. The EPA would likely contact the OCD to communicate about the matter before issuing any documentation.

Also, please be advised that if an NPDES Permit is not required, the OCD will likely pursue any request to discharge onto land and/or as a "Major Modification" to the permit (\$100 Filing Fee with ½ Permit Fee).

Thank you in advance.

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**From:** Janney, David [<mailto:david.janney@amec.com>]

**Sent:** Thursday, September 06, 2012 12:20 PM

**To:** Chavez, Carl J, EMNRD

**Subject:** RE: Lightning Dock Geothermal Project (GTHT-001) August 30, 2012 Voicemail Message Regarding NPDES Permit

Greetings Mr. Chavez.

I understand OCD's position on this as a condition of the DP. I will take this up with someone else at EPA and further explain the situation. It is easy to understand that the State sold view this as required by the DP yet the EPA not see that it is required.

Regards,

David

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**From:** Chavez, Carl J, EMNRD [<mailto:CarlJ.Chavez@state.nm.us>]

**Sent:** Tuesday, September 04, 2012 10:37 AM

**To:** Janney, David

**Cc:** Sanchez, Daniel J., EMNRD; VonGonten, Glenn, EMNRD; Dade, Randy, EMNRD; Shapard, Craig, EMNRD

**Subject:** Lightning Dock Geothermal Project (GTHT-001) August 30, 2012 Voicemail Message Regarding NPDES Permit

David:

The New Mexico Oil Conservation Division (OCD) is in receipt of your above subject message.

The OCD requests that Los Lobos provide a letter from the United States (US) Environmental Protection Agency (EPA) Region 6 confirming your voice mail message of 8/30 indicating that the EPA does not regard the Animas Valley to be

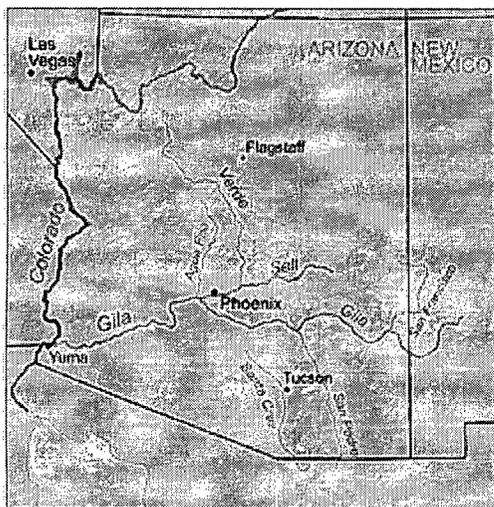
“Waters of the US” and that no EPA National Pollutant Discharge Elimination System (NPDES) Permit would be required by the EPA for geothermal project related discharges into the Animas Valley.

The OCD information is as follows:

**E. Spent Produced Water and Cooling-Tower Blow-Down Water Monitoring Program:**

v. The owner/operator may only discharge into "Waters of the State" in accordance with a National Pollutant Discharge Elimination System (NPDES) Permit issued by EPA Region 6. The OCD must approve the discharge concurrently with EPA. The applicant must comply with all of the Federal NPDES monitoring, treatment, and reporting requirements specified in its NPDES permit.

OCD will require at a minimum “Modification” to the discharge permit (20.6.2.3107 NMAC and 20.6.2.3108 NMAC) to consider any discharges in the Animas Valley.



**20.6.4.601 SAN FRANCISCO RIVER BASIN - The main stem of the San Francisco river from the New Mexico-Arizona line upstream to state highway 12 at Reserve and perennial reaches of Mule creek.**

**A. Designated Uses:** irrigation, marginal warm water and marginal coldwater aquatic life, livestock watering, wildlife habitat and secondary contact.

**B. Criteria:**

(1) In any single sample: pH within the range of 6.6 to 9.0 and temperature 32.2°C (90°F) or less. The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses listed above in Subsection A of this section.

(2) The monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less; single sample 410 cfu/100 mL or less (see Subsection B of 20.6.4.14 NMAC).

[20.6.4.601 NMAC - Rp 20 NMAC 6.1.2601, 10-12-00; A, 05-23-05]

**20.6.4.602 SAN FRANCISCO RIVER BASIN - The main stem of the San Francisco river from state highway 12 at Reserve upstream to the New Mexico-Arizona line.**

**A. Designated Uses:** coldwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact.

**B. Criteria:**

(1) In any single sample: pH within the range of 6.6 to 8.8 and temperature 25°C (77°F) or less. The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses listed above in Subsection A of this section.

(2) The monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less; single sample 410 cfu/100 mL or less (see Subsection B of 20.6.4.14 NMAC).

[20.6.4.602 NMAC - Rp 20 NMAC 6.1.2602, 10-12-00; A, 05-23-05]

**20.6.4.603 SAN FRANCISCO RIVER BASIN - All perennial reaches of tributaries to the San Francisco river above the confluence of Whitewater creek and including Whitewater creek.**

**A. Designated Uses:** domestic water supply, fish culture, high quality coldwater aquatic life, irrigation, livestock watering, wildlife habitat and secondary contact.

**B. Criteria:**

(1) In any single sample: specific conductance 400 µmhos/cm or less, pH within the range of 6.6 to 8.8 and temperature 20°C (68°F) or less except 25°C (77°F) or less in Tularosa creek. The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses listed above in Subsection A of this section.

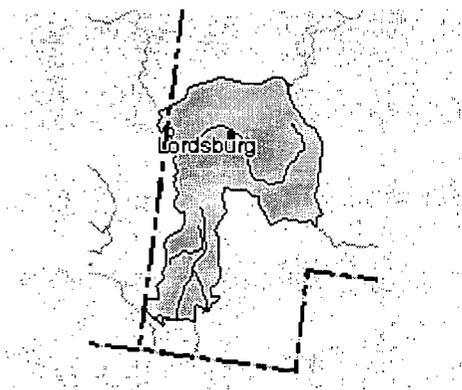
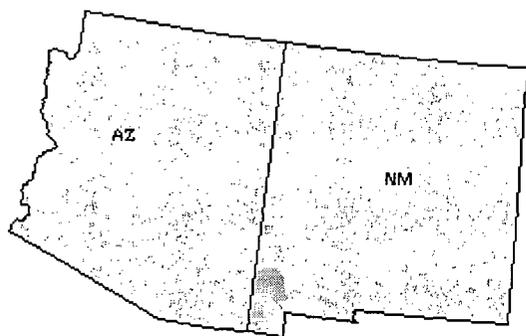
(2) The monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less; single sample 235 cfu/100 mL or less (see Subsection B of 20.6.4.14 NMAC).

[20.6.4.603 NMAC - Rp 20 NMAC 6.1.2603, 10-12-00; A, 05-23-05]

The EPA information that the OCD is reviewing is as follows:

# Animas Valley Watershed -- 15040003

## Animas Valley



### Watershed Profile

Watershed Name: Animas Valley

USGS Cataloging Unit: 15040003

AZ 1st Congressional District

NM 2nd Congressional District

AZ 8th Congressional District

[Citizen-based Groups at work in this watershed](#) (Provided by [Adopt your Watershed](#))

[Water quality monitoring data from this watershed](#) (Provided by STORET)

[Environmental Websites Involving this Watershed](#)

#### Assessments of Watershed Health

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- [Assessed Waters by Watershed](#)

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- [New Mexico](#)

#### Information provided by the United States Geological Survey (USGS) [EXIT Disclaimer](#)

- [Stream Flow](#) (Source: USGS)

- [Science in Your Watershed](#)

- [Water use data \(1985-2000\)](#): Information about the amount of water used and how it is used.

- [Selected USGS Abstracts](#)

#### Places Involving this Watershed

*Counties:*

- [Cochise](#)

- [Grant](#)

- [Hidalgo](#)

- [Luna](#)

*National Estuary Programs:*

- None

*States:*

- [Arizona](#)

- [New Mexico](#)

*Other Watersheds Upstream:*

- None

*Other Watersheds Downstream:*

- None

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- [Cumulative TMDLs by Pollutant](#)

[New Mexico State Report](#)

#### Other states that contain this watershed:

[Arizona, Animas Valley Watershed](#)

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[Water Quality Data Available for this Watershed](#)

## New Mexico, Animas Valley Watershed

Click on the watershed for an interactive map

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### Listed Waters for Reporting Year 2010 New Mexico, Animas Valley Watershed

*No listed waters reports for this watershed.*

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### Causes of Impairment for Reporting Year 2010 New Mexico, Animas Valley

*No impairment data have been reported to EPA for this watershed.*

[Top of page](#)

### Cumulative TMDLs by Pollutant

*No TMDL data have been reported to EPA for this watershed.*

#### Search TMDL Documents

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Please contact me if you have questions. Thank you.

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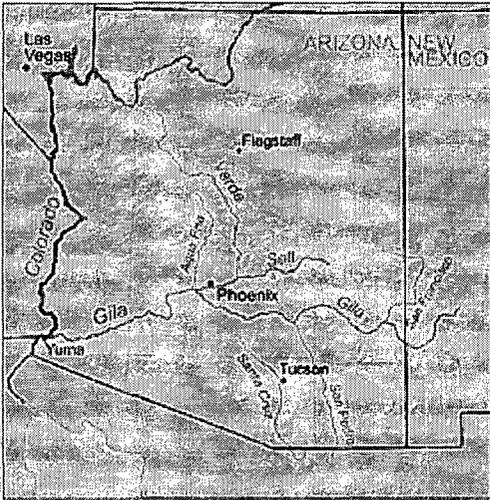
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[20.6.4.601 NMAC - Rp 20 NMAC 6.1.2601, 10-12-00; A, 05-23-05]

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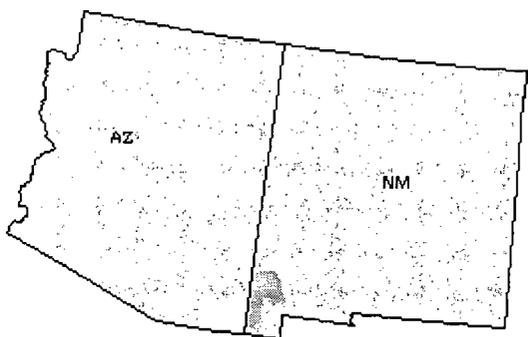
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[20.6.4.603 NMAC - Rp 20 NMAC 6.1.2603, 10-12-00; A, 05-23-05]

The EPA information that the OCD is reviewing is as follows:

## Animas Valley Watershed -- 15040003

### Animas Valley



### Watershed Profile

Watershed Name: Animas Valley

USGS Cataloging Unit: 15040003

AZ 1st Congressional District

NM 2nd Congressional District

AZ 8th Congressional District

[Citizen-based Groups at work in this watershed](#) (Provided by [Adopt your Watershed](#))

[Water quality monitoring data from this watershed](#) (Provided by STORET)

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- [Science in Your Watershed](#)
- [Water use data \(1985-2000\)](#): Information about the amount of water used and how it is used.
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**Places Involving this Watershed**

Counties:

- [Cochise](#)
- [Grant](#)
- [Hidalgo](#)
- [Luna](#)

National Estuary Programs:

- None

States:

- [Arizona](#)
- [New Mexico](#)

Other Watersheds Upstream:

- None

Other Watersheds Downstream:

- None

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- [Cumulative TMDLs by Pollutant](#)
- [New Mexico State Report](#)

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[Arizona, Animas Valley Watershed](#)

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- [Assessment Database](#)
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- [Statistical Survey Template \(Excel, 585 KB\)](#)

**Listed Waters for Reporting Year 2010  
New Mexico, Animas Valley Watershed**

*No listed waters reports for this watershed.*

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**Causes of Impairment for Reporting Year 2010  
New Mexico, Animas Valley**

*No impairment data have been reported to EPA for this watershed.*

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## **Cumulative TMDLs by Pollutant**

*No TMDL data have been reported to EPA for this watershed.*

**Search TMDL Documents**

[Full Text Search of TMDL Documents](#)

Please contact me if you have questions. Thank you.

Carl J. Chavez, CHMM

New Mexico Energy, Minerals & Natural Resources Department

Oil Conservation Division, Environmental Bureau

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**To:** Janney, David (david.janney@amec.com)  
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**Subject:** Lightning Dock Geothermal Project (GTHT-001) August 30, 2012 Voicemail Message Regarding NPDES Permit

David:

The New Mexico Oil Conservation Division (OCD) is in receipt of your above subject message.

The OCD requests that Los Lobos provide a letter from the United States (US) Environmental Protection Agency (EPA) Region 6 confirming your voice mail message of 8/30 indicating that the EPA does not regard the Animas Valley to be "Waters of the US" and that no EPA National Pollutant Discharge Elimination System (NPDES) Permit would be required by the EPA for geothermal project related discharges into the Animas Valley.

### The OCD information is as follows:

#### E. Spent Produced Water and Cooling-Tower Blow-Down Water Monitoring Program:

v. The owner/operator may only discharge into "Waters of the State" in accordance with a National Pollutant Discharge Elimination System (NPDES) Permit issued by EPA Region 6. The OCD must approve the discharge concurrently with EPA. The applicant must comply with all of the Federal NPDES monitoring, treatment, and reporting requirements specified in its NPDES permit.

OCD will require at a minimum "Modification" to the discharge permit (20.6.2.3107 NMAC and 20.6.2.3108 NMAC) to consider any discharges in the Animas Valley.



#### 20.6.4.601 SAN FRANCISCO RIVER BASIN - The main stem of the San Francisco river from the New Mexico-Arizona line upstream to state highway 12 at Reserve and perennial reaches of Mule creek.

**A. Designated Uses:** irrigation, marginal warm water and marginal coldwater aquatic life, livestock watering, wildlife habitat and secondary contact.

#### **B. Criteria:**

- (1) In any single sample: pH within the range of 6.6 to 9.0 and temperature 32.2°C (90°F) or less. The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses listed above in Subsection A of this section.
- (2) The monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less; single sample 410 cfu/100 mL or less (see Subsection B of 20.6.4.14 NMAC).

[20.6.4.601 NMAC - Rp 20 NMAC 6.1.2601, 10-12-00; A, 05-23-05]

**20.6.4.602 SAN FRANCISCO RIVER BASIN - The main stem of the San Francisco river from state highway 12 at Reserve upstream to the New Mexico-Arizona line.**

**A. Designated Uses:** coldwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact.

**B. Criteria:**

(1) In any single sample: pH within the range of 6.6 to 8.8 and temperature 25°C (77°F) or less. The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses listed above in Subsection A of this section.

(2) The monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less; single sample 410 cfu/100 mL or less (see Subsection B of 20.6.4.14 NMAC).

[20.6.4.602 NMAC - Rp 20 NMAC 6.1.2602, 10-12-00; A, 05-23-05]

**20.6.4.603 SAN FRANCISCO RIVER BASIN - All perennial reaches of tributaries to the San Francisco river above the confluence of Whitewater creek and including Whitewater creek.**

**A. Designated Uses:** domestic water supply, fish culture, high quality coldwater aquatic life, irrigation, livestock watering, wildlife habitat and secondary contact.

**B. Criteria:**

(1) In any single sample: specific conductance 400 µmhos/cm or less, pH within the range of 6.6 to 8.8 and temperature 20°C (68°F) or less except 25°C (77°F) or less in Tularosa creek. The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses listed above in Subsection A of this section.

(2) The monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less; single sample 235 cfu/100 mL or less (see Subsection B of 20.6.4.14 NMAC).

[20.6.4.603 NMAC - Rp 20 NMAC 6.1.2603, 10-12-00; A, 05-23-05]

**The EPA information that the OCD is reviewing is as follows:**

## Animas Valley Watershed -- 15040003

### Animas Valley



### Watershed Profile

Watershed Name: Animas Valley

USGS Cataloging Unit: 15040003

AZ 1st Congressional District

NM 2nd Congressional District

AZ 8th Congressional District

[Citizen-based Groups at work in this watershed](#) (Provided by [Adopt your Watershed](#))

[Water quality monitoring data from this watershed](#) (Provided by STORET)

[Environmental Websites Involving this Watershed](#)

#### Assessments of Watershed Health

- [Impaired Water for this watershed](#)
- [Assessed Waters by Watershed](#)
  - [Arizona](#)
  - [New Mexico](#)

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**Causes of Impairment for Reporting Year 2010  
New Mexico, Animas Valley**

*No impairment data have been reported to EPA for this watershed.*

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**Cumulative TMDLs by Pollutant**

*No TMDL data have been reported to EPA for this watershed.*

**Search TMDL Documents**

[Full Text Search of TMDL Documents](#)

Please contact me if you have questions. Thank you.

Carl J. Chavez, CHMM

New Mexico Energy, Minerals & Natural Resources Department

Oil Conservation Division, Environmental Bureau

1220 South St. Francis Drive, Santa Fe, New Mexico 87505

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E-mail: [CarlJ.Chavez@State.NM.US](mailto:CarlJ.Chavez@State.NM.US)

Website: <http://www.emnrd.state.nm.us/ocd/>

“Why Not Prevent Pollution; Minimize Waste; Reduce the Cost of Operations; & Move Forward With the Rest of the Nation?” To see how, please go to: “Pollution Prevention & Waste Minimization” at

<http://www.emnrd.state.nm.us/ocd/environmental.htm#environmental>

Information provided by the United States Geological Survey (USGS) [EXIT Disclaimer](#)

- [Stream Flow](#) (Source: USGS)
- [Science in Your Watershed](#)
- [Water use data \(1985-2000\)](#): Information about the amount of water used and how it is used.
- [Selected USGS Abstracts](#)

**Places Involving this Watershed**

Counties:

[Cochise](#)

[Grant](#)

[Hidalgo](#)

[Luna](#)

National Estuary Programs:

None

States:

[Arizona](#)

[New Mexico](#)

Other Watersheds Upstream:

None

Other Watersheds Downstream:

None

Visit the [Envirofacts Warehouse](#) to retrieve environmental information from EPA databases on [Air](#), [Community Water Sources](#), [Water Dischargers](#), [Toxic Releases](#), [Hazardous Waste](#), and [Superfund Sites](#). Geographic searches include zip code, city, EPA Region, or county.

- Report

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- [Causes of Impairment](#)
- [Cumulative TMDLs by Pollutant](#)
- [New Mexico State Report](#)

**Other states that contain this watershed:**

[Arizona, Animas Valley Watershed](#)

**For More Information:**

[Download Excel compatible information](#)

[Download GIS Information](#) (Internet Explorer only)

[Water Quality Data Available for this Watershed](#)

## New Mexico, Animas Valley Watershed

Click on the watershed for an interactive map

**Search for a water body within Animas Valley**

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- [Exchange Network](#)
- [Assessment Database](#)
- [Statewide Statistical Surveys](#)
- [Statistical Survey Template \(Excel, 585 KB\)](#)

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### Listed Waters for Reporting Year 2010 New Mexico, Animas Valley Watershed

*No listed waters reports for this watershed.*

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