

10:00-3:00 PM Tuesday 16 September, 2003
Statewide TMDL Advisory Group
Room 111, DEQ Metcalf Building, Helena
Meeting Minutes

ATTENDEES:

Group Members:

John Youngberg, Chairman
John Bloomquist
Bruce Sims
Barb Butler
Robin Cunningham
Dave Debats
Doug Parker
Rob Ament
Marc Vessar
Brian Sudgen

Others:

Gail Ambercrombie
Julia Altemus
Ellen Engstedt
Claudia Massman
Pete Schade
Darrin Kron
Don Allen
Carole Mackin
Rosie Sada
Allan Rollo
Terry Wadsworth
Bob Bukantis
George Mathieus
Michael Pipp
Art Compton
Mark Kelley
Robert Ray

Introductions:

The meeting was called to order at 10:05 a.m. by Chairman John Youngberg. A round of introductions was preformed. Minutes were approved as written.

Resignation of Environmental Organization Rep (Bob Bukantis):

Stuart Levit resigned from American Wildlands and has asked Rob Ament to sit in for him until DEQ can formally fill the Environmental Conservation interests position. DEQ's director, Jan Sensibaugh, makes the final appointments to the council. Rob Ament should be considered a voting member for this meeting.

DEQ is attempting to determine if Gary Frank has been formally appointed. Everyone else has been formally appointed.

Summary of Ninth Circuit Court Decision and Legal "playing field" (Claudia Massman):

In late July, the Ninth Circuit Court issued a ruling that upheld the district court's ruling indicating EPA had acted arbitrarily when it approved Montana's 1998 list of impaired streams, because the state had not done enough TMDLs. The lawsuit was filed in 1997, the District court issued an order in 2000 and by December 2002 appeal of the District Court order was being briefed in the Ninth Circuit. The issue on appeal was under the Administrative Procedure Act. EPA was arguing that the District Court did not have jurisdiction to review this matter because EPA had not made a final decision on the pace of Montana's TMDL development. EPA lost that argument. The Ninth Circuit court said there was a final decision on the list and given the broad purposes of the Clean Water Act, EPA should have considered the issue of pace, so EPA's approval of the 1998 list was arbitrary.

The issue became whether the remedy was appropriate. The remedy included a complex injunction, setting deadlines for developing TMDLs and making the State use the 1996 list for TMDL development. EPA argued that even if they are liable for making an arbitrary decision, under EPA rules the appropriate remedy is to remand the issue back to the agency so that they can reconsider their approval and do it correctly. The Ninth Circuit Court said that they thought that the District Court was right to issue an injunction given the years of delay of the State. The Ninth Circuit affirmed the injunction which set parameters on how the State should be doing its job. The Ninth Circuit Court went through the remedy and upheld the year 2007 deadline Judge Molloy had imposed. The Ninth Circuit said if this schedule is unworkable the State could go back to the District Court and ask for an extension of time. The Ninth Circuit Court looked at the permit ban; Molloy had banned all new and increased permits until all necessary TMDLs were done; and decided that was appropriate because it was consistent with EPA's rules.

The last thing the Ninth Circuit Court looked at was the order that told the State that they had to develop TMDLs for everything on the 1996 list. The State argued that this was inappropriate because it conflicted with State and Federal law, which actually requires States to revise the list every two years. The Ninth Circuit Court said the remedy should not conflict with State and Federal law and that the District Court was wrong in making the State stick with the 1996 list. It is okay for the State to de-list streams and could move away from the 1996 list and do TMDLs for the streams on the newest list. However, the Ninth Circuit Court also said that if any plaintiff was upset that some streams were unlisted, they could challenge EPA's approval of the revised list in another lawsuit.

A second lawsuit has been filed in Judge Molloy's Court where the same plaintiffs have challenged EPA's approval of the State's 2000 and 2002 lists. These lists have had a lot of the streams removed because of the lack of sufficient credible data. The plaintiffs are arguing that EPA's rules don't allow de-listing for lack of data but rather requires new data to prove that the stream is not impaired. This lawsuit is now waiting for a decision from Judge Molloy. The state is in a holding pattern on what list to use until Judge Molloy makes a decision.

John Bloomquist asked what list DEQ was using with the 2000 and 2002 subject to litigation? Robert Ray said that DEQ is doing the TMDLs on a Planning

Area basis. DEQ is looking at both the 1996 and 2002 lists to determine what listings are accurate and need TMDLs done vs. which ones were based on insufficient data and need more data to determine if a TMDL is needed. If there is a new pollutant on the 2002 list that does not have sufficient data for TMDL development, DEQ will determine if it can be done effectively and efficiently now or wait until DEQ has sufficient resources to address that pollutant because it is not subject to the 1996 list court schedule. For segments removed for insufficient credible data, DEQ will collect additional data to determine if a TMDL is needed or if the stream is supporting its beneficial uses and does not need a TMDL.

John Youngberg asked what is the effect of the Court's decision on issuing permits? Claudia Massman said there has not been a problem for DEQ because there have been very few new or increased sources that need to be permitted. DEQ has interpreted the order to mean do just the TMDLs necessary to issue the permit.

Alternative TMDL Approaches (Robert Ray):

An alternative TMDL approach the State has been hearing more about is the Paper TMDL. Paper TMDLs are TMDLs developed on existing data. The state chooses targets based on regional conditions. It is uncertain if the targets, sources and allocations have been identified correctly and are appropriate to the watershed. Paper TMDLs also have very limited public involvement.

A Phased TMDL is an approach where the department goes into the watershed and collects enough information to be able to identify appropriate watershed specific targets. The state develops a phased approach identifying targets, sources, allocations given to specific sources and additional steps that need to be taken to develop with more certainty a plan that will meet the state water quality standards. This plan has a follow up plan that identifies how to get a restoration strategy worked out. DEQ is currently doing Complete and Phased TMDLs. A Complete TMDL is where DEQ knows what the standards, targets, and sources are. Art Compton mentioned that the EPA Listing Guidance offers federal land managers an alternative to the TMDL process. Robert Ray said the state did include information in the STAG mailing on the categorization for the 303(d) listing that provides category 4b as another alternative. Category 4b allows a non-TMDL to be done for a water body as appropriate where there exists regulatory and other assurances that if the plan is implemented it will meet Water Quality Standards. This alternative uses existing regulatory and management agency structures instead of a TMDL. Bob Bukantis said that it is a listing category put in place to take streams off the list before they require a TMDL. There is not a lot of clarity to show DEQ what is required to be done right now but EPA expects DEQ to use new categories in future 305(b) and 303(d) reporting. Category 5 would be waters that have identified pollutants and require a TMDL. Category 4b includes point source problems that might be resolved with permitting, or non-point source problems that might be resolved with federal land management activities and assurances that it is going to do the same thing as a TMDL and pulls it off the 303(d) list before a TMDL is required.

John Youngberg asked how close the Department is to the 2007 deadline? Robert Ray responded that currently the Department has 80 TMDL planning areas to do according to the schedule. Approximately 20 TMDLs need to be done per year and DEQ is currently doing between 5-10 a year. Each year DEQ enters into a cooperative agreement with EPA to have EPA complete some of the TMDLs.

John Bloomquist asked why the federal land management activities with water quality components could not be combined into a TMDL for sedimentation? Darrin Kron said that they do not have the specific components required by EPA. Robert Ray said that a significant amount of TMDL work is in developing water body specific targets to meet the narrative standards for sediment and nutrients.

John Youngberg said that there are a lot of influences preventing land use activities from happening in certain areas because TMDLs are not done. An alternative way will need to be found to complete TMDLs if they cannot be completed by 2007 to enable land use activities to continue.

John Bloomquist asked if EPA is the problem, or if the interpretation of what is an appropriate TMDL on the non-point source side is the problem, or both? The State should take some initiative and tell EPA how the state does non-point source TMDLs. DEQ should take the BMP's used in an area to develop a TMDL and give it to EPA to approve. EPA would then identify why they don't think the BMP's are appropriate and DEQ could learn from this. Robert Ray responded by saying there are three pieces slowing down the process. The first is EPA saying the State has to demonstrate in a TMDL that the plan will achieve the water quality standards in the Clean Water Act. EPA has review authority and can disapprove the TMDL and has 60 days to rewrite the TMDL. Second, the State's interest in developing a TMDL that supports the water quality standards and achieves the standards means working with locals to identify which BMP's are appropriate, what appropriate targets should be selected and why the State is saying the stream is impaired. Thirdly, when the State is working with the local community in developing a TMDL, the local community wants assurance that what the State says is impaired is in fact impaired. The community wants to know if all of the steps need to be taken to achieve water quality standards. It is a long process when working with the stakeholders to go through the development of the targets, source assessment, the allocations and the implementation strategy.

Doug Parker said that it is clear there is not enough time to meet the 2007 schedule using the complete approach that the state is doing now. The committee is looking for alternatives to speed up the process. The public involvement part of the process needs to be streamlined. A program needs to be in place to meet the 2007 deadline. It should be a straightforward process when the data is in place to determine the waste load allocations. Implementation should wait until after the TMDL is written and there is no deadline to deal with. Robert Ray stated that there is a difference in adequacy of data for Beneficial Use Support determinations and development of appropriate TMDLs. The data question is a key question the State continues to struggle with because there are many streams that don't have any data.

John Youngberg asked how these streams were listed? Robert Ray said the streams were listed on the 1996 list due to visually seeing sediment in the water to determine there is an eroding bank upstream. There is still an outstanding issue of whether to use the 1996 list or the 2002 list. DEQ is focused on getting the streams assessed that need TMDLs.

Doug Parker said that the advisory group needs an understanding of what the staffing situation is and what the focus is. When DEQ removed the streams from the 2000 and 2002 list, it gave the impression that DEQ had gathered the data necessary to validate the 1996 list. DEQ needs to look at scheduling staff to do specific streams as part of the process to do a TMDL. George Mathieus said the main problem is resources. There are only four lead planners, two support planners, four monitoring planners and two temporaries trying to do 800 water bodies. There are 12 dedicated staff to work on the TMDLs. The significant funding source for TMDLs is 319 funds from EPA, which requires local stakeholders to do the work. The focus should be what other resources can be used to reach the goal. John Bloomquist said the advisory group needs to know if the program will not succeed because of the process currently in place. What processes need to be in place to get the TMDLs done?

Bob Bukantis said that DEQ felt better about the streams on the 2000 list. When it became clear DEQ was going to have to use the 1996 list, DEQ switched to a watershed approach. DEQ decided there was a need to get ahead of the schedule and do the assessments for the waters on the 1996 list to get the TMDLs done. DEQ realized that the 2007 deadline was not going to be met and went to the legislature to ask for an extension. Rosie Sada's staff did 200 reassessments by collecting the data. The balance of the reassessments are planned for the next two field seasons.

Doug Parker asked if there was a list showing how DEQ would achieve the 2007 deadline? Robert Ray directed them to the sheet included in the handouts. The list shows where DEQ is at in accomplishing the deadline. DEQ is asking for guidance on prioritization. John Youngberg asked if there was a way to write the TMDLs so there are only 10 paragraphs that need to be changed for the streams in each of the watersheds? Robert Ray agreed it is an alternative that could be offered to EPA.

Ellen Engstedt said there is a timber company not doing very good because of the Lolo Post-Burn lawsuit. Where is the TMDL process going in the next few weeks and months? How is the process going to get expedited? The program has spent more time in court than resolving the TMDL issue.

John Bloomquist asked what does DEQ know about Idaho's progress? Robert Ray said Idaho is going to meet their schedule. Idaho is a little behind this year, but it looks like Idaho will be caught up in March of next year. Idaho does not use 319 funds for their TMDL program. They have 23 staff members writing TMDLs based on the existing data. Idaho has more credible data.

John Bloomquist asked if the focus should be on just writing the TMDLs? Is DEQ focusing on streams that have enough data, or is DEQ working on getting more data for streams that do not have sufficient credible data, or getting data for streams that are not on the list? Bob Bukantis responded that DEQ is only getting

data for waters that are on the list and data needed to support TMDL development. There is a lot of focus on streams that were removed from the 1996 list due to lack of data. Before a TMDL is done, there needs to be a determination if the TMDL is necessary. Judge Molloy says DEQ has to use the 1996 list. Bob said DEQ has gotten more organized over the years and more TMDLs are being done this year. Robert Ray added that there are approvals for 6 TMDL planning areas with another 5 TMDL planning areas that should be approved in early 2004. TMDL planning areas are based on watersheds.

Barb Butler said that her concern is to not go back to the situation where there is insufficient or non-credible data just to get something on the table. She would rather have accurate and sufficient data to support the TMDL.

John Bloomquist said DEQ should focus the program where there is data, where there are known issues and where TMDLs can be done. This will be working towards the goal of improving water quality. DEQ shouldn't focus the TMDL program on trying to please everybody.

Bruce Sims said that what John is saying is in harmony with the five steps in the latest EPA guidance. Only Category 5 waters that have enough data to say the streams are impaired will have TMDLs done.

Bob Bukantis said the TMDL program has been going through intensive workload planning sessions that have improved the efficiency of work getting done. The TMDL program is becoming more coordinated, reorganized, focused and is identifying the amount of work that can be physically done given the current resources.

John Bloomquist asked if the TMDL program made the decision to focus on the 2002 list, does that make the program more functional? George Mathieus said that all of the questions could have been answered if Robert Ray's presentation on prioritization had been done first. DEQ has spent a lot of time in the past month working on prioritization. DEQ looked at what makes sense, where does DEQ already have data, and where there is already local interest. DEQ looked at the difference between the 1996 and 2002 lists to see if the 2002 list would save time. DEQ staff looked at where there are groups already established with 319 money, what is feasible and what is not. DEQ looked at what is possible with the current manpower.

Dave Debats asked if there are any plans to get EPA more involved? Dave noticed that EPA has not completed any TMDLs. John Youngberg asked what does EPA do for assessment? Robert Ray said that EPA hires consultants with 105(b)(3) and other money to develop the TMDLs EPA agreed to take on in the Cooperative Agreement. In the past DEQ received 105(b)(3) money for TMDL planning.

Brian Sudgen asked what percentage of the effort put into these restoration plans is really around the implementation side? DEQ needs to deal with the watershed plan first and deal with the implementation when there is time. Robert Ray said DEQ does Phased TMDLs, which is the follow up in reducing the uncertainty for targets and allocations. Implementation outside of the Phased TMDL is only an additional 10 to 15 percent of the workload. George Mathieus

said he relies on stakeholders for his information because some stakeholders already have plans developed for the area.

Brian Sudgen said the public involvement is more on the implementation side, which spurs the involvement of the public. Planners are then required to go to more meetings to answer questions stakeholders have. Brian said DEQ needs to look at the sediment problem for example, where the sediment is coming from, how the sediment problem could be cut in half, how the stream will come back and meet beneficial uses and package it up and get it out the door.

Michael Pipp said the implementation part of the Teton TMDL was only about 5 pages and provided a range of descriptions, ideas and practices that should be done. The implementation plan was not site specific, but land-use specific. The local group was encouraged to do site specific reviews of what the issues are. Some feedback from the local group indicated that the implementation plan was not enough. A lot of the effort is put into presenting the case of the impairment source. Darrin Kron said he gives the watershed group the opportunity to get out and do a restoration plan and match it back to the sources on the watershed. DEQ has local groups with money sources getting involved in the implementation plan.

Don Allen asked what DEQ is doing to get ahead of the curve? How many planning areas in the watersheds are lined up in the next months and years? There is a lot of frustration over where the focus of DEQ is. Don urged DEQ to do what needs to be done to get the TMDLs out. What does DEQ need to do to get TMDLs done? Don asked if Robert Ray could send out his presentation to everyone?

Julia Altemus said that there is a lot of anxiety in the Timber Industry about the TMDL process being so slow and not on target.

John Bloomquist said the only thing that has changed is the ability to do some of the permits. Molloy should not be a huge obstacle in implementing the program. Is it the legislation itself causing the problem? DEQ should run the program on what the legislature and Ninth Circuit Court said, which allows DEQ to use the 2002 list to do TMDLs. The funding question is a good question. John is interested in hearing from the Department on how they are going to use the 2002 list to get TMDLs out. What needs to change to help the Department to get TMDLs completed? What is going to be done with the 2002 list? John Youngberg asked if the program could go ahead and use the 2002 list? Robert Ray said the focus has been put on getting TMDLs done for streams that are a known issue.

John Bloomquist asked what percentage of the work and money is going towards the assessment of new water bodies and towards old water bodies that fell off of the list? Rosie Sada said there are eight staff members working on getting the TMDLs done on the list, four of which are monitors assigned to getting data. State law requires DEQ to reassess waters that don't have sufficient credible data. Approximately 80 streams with 200 sites were sampled for reassessment this year from July to September. Reassessments for all waters with insufficient credible data are being planned for 2004 and 2005. The Monitoring staff collects data to determine if the stream is impaired and needs a TMDL. Most of the time there is not enough data to make a call for targets,

allocations and source assessments. The 319 funds have to go to the monitoring section but there is not enough money to do the necessary monitoring. A model can't be made on scattered data.

John Youngberg said that if DEQ moves to the 2002 list there is enough data to get the TMDLs done. Gail Ambercrombie said that the Montana statutes says that if the Department removes a water body because of lack of sufficient credible data to support the listing, the Department shall monitor and assess the water bodies during the next field season or as soon as possible to determine whether the water body is threatened or impaired. Maybe that statute needs to be changed because it is telling the Department to monitor the streams with insufficient data. John Bloomquist said that having to monitor the streams that fall off the list is what takes up half of the time of the monitoring staff. Rosie Sada said if the Department has sufficient credible data it means there is enough data for the listing issue but that does not mean there is enough data to write a TMDL.

John Youngberg cited Judge Dwyer in Idaho Sportsmen's Coalition vs. Browner, who stated that the lack of precise information must not be a pretext for delay in doing TMDLs. Idaho takes the amount of data they have, writes the TMDL and ships it out.

Discussion on TMDL Prioritization (Robert Ray):

Robert Ray went through the power point presentation on how DEQ is prioritizing the TMDL work (see power point presentation attached). DEQ wants input from the STAG committee on the scoring sheets. Is DEQ looking at the right factors in order to prioritize which TMDL planning areas DEQ should be taking the lead on? DEQ wants to be able to go to EPA and say that DEQ has this amount of 319 funding and internal funding to do these TMDLs and the rest are EPA's responsibility.

Doug Parker asked if EPA was on schedule to deliver the three that were due this year? Robert Ray said that EPA had some delays and was not on schedule. Flathead Headwaters is going to be in 2004.

John Youngberg asked what happens if DEQ does their part but EPA does not? Where does that leave DEQ with the court challenge? Claudia Massman said that DEQ has slipped before and the Plaintiffs have not taken DEQ back to court for it. EPA is ultimately responsible for any of the TMDLs not done.

Rob Ament asked how many pollutant TMDLs would there be if you went by segments? Robert Ray said that in the case of planning areas, it is hard to say which segments need to have TMDLs done. Each of the planning areas could have any where from 3 to 35 TMDLs that need to be done.

Art Compton asked for guidance on whether DEQ should continue to do Phased TMDLs or whether both EPA and DEQ needs to do Paper TMDLs. Doug Parker said whatever DEQ decides to do, DEQ needs to be positive about and sell it to EPA. The TMDLs that are going to be done are not going to be complete. Other states take a template and get the TMDLs finished. Make sure the setup of the words does not lead to failure. Doug said that DEQ doesn't need to backtrack on the watershed approach. If DEQ gets stuck with a lawsuit and a

TMDL is needed there should be flexibility allowed to get it done. There are two questions: 1) Is DEQ doing the right type of TMDLs? 2) Should some of the TMDL load be passed on to EPA? Art Compton said EPA is doing half of the TMDLs. EPA is helping with the Tongue and Powder River because there are federal issues in the watershed. Doug Parker asked if there was more TMDLs that EPA are going to do? Robert Ray said the list is the sum total of the TMDLs needed to be done (2003 to 2007). In 2007 there are no indications of who does them because the projects have not been negotiated. DEQ can go in with EPA and ask them to finish off the ones that DEQ can't do.

Art Compton said EPA is working the issues out. EPA is looking at the current federal district court case and what list is supposed to be used. EPA will say that if the 2007 deadline sticks then EPA and DEQ will meet it. Doug Parker asked if EPA is going to produce acceptable TMDLs or if the TMDLs will be a different quality? Art Compton said he did not have any doubt that DEQ's TMDLs will stand a better chance of implementation than the ones EPA does.

Rob Ament asked if the difference between EPA and DEQ is that EPA contracts out, where DEQ is gathering working groups and putting the TMDLs together? Robert Ray said he was at a Lower Missouri River Meeting where EPA was talking to the locals about the development of a TMDL. Robert does not know how extensive the public involvement will be with the TMDLs EPA writes.

John Youngberg assumes that EPA is going to move to Paper TMDLs. If the state does Phased TMDLs would there be zero percent chance that EPA would accept them? Art Compton said that he did not mean that Phased TMDLs are not the way to go. A Phased TMDL is a quality substitute TMDL. The Paper TMDL is inactive in the watershed until the five-year review. A Phased TMDL is one where it continues to work for the watershed. DEQ will be doing Phased TMDLs wherever they can. John Youngberg said that as long as it is on the shelf and it is a dynamic document that DEQ wouldn't be stopping other projects and activities from happening in the watershed. Art Compton said DEQ can get the legal constraints removed by doing a paper TMDL to provide comfort at the local level. There is no mandatory implementation of non-point source TMDLs in Montana. There might not be a huge problem with having a Paper TMDL on the shelf until the five-year review.

Claudia Massman does not think there are any legal constraints on the department for doing a Paper or a Phased TMDL. The Department can do the Phased TMDL and get that approved and then work on the implementation part of the TMDL. This process would meet the State Law requirements.

John Bloomquist said Paper TMDLs using a template would allow DEQ to get the TMDLs out on time. The implementation phase of the Paper TMDLs may need to be modified for specific TMDLs. Is DEQ using this approach now? Robert Ray said that DEQ is currently using this approach. For example, in the Lolo TMDL, DEQ identified what the appropriate targets and allocations would be. The TMDL then indicates the steps that need to happen to see good development of a specific implementation plan. George Mathieus said he worked with various constituents to show what an appropriate load is and non-site specific ways to get to the appropriate load.

George Mathieus said a Paper TMDL is the target numbers needed to fulfill the Court Order. A Phased TMDL has enough confidence to produce part of a TMDL.

John Bloomquist asked if DEQ could take a TMDL that is already done and use it as a template to get the other watershed TMDLs done more quickly? Is this something that the committee could support? George Mathieus said he feels this is something DEQ is already doing. DEQ is doing TMDLs that can be used in the future for the same kind of TMDL. Robert Ray said that when DEQ started the process, there was no good example of a TMDL available. DEQ is starting to get templates in line and working towards an approach that has consistency to it, which allows the planners to move through the TMDLs quicker.

Brian Sudgen said that the watershed approach is the most appropriate way to go. It looks like DEQ needs to get out 10 TMDLs per year instead of 5. DEQ needs to reduce the emphasis on implementation and pick it up when the TMDL is completed. There are some opportunities to speed TMDLs up by not trying to perfect them. Michael Pipp said that at the beginning of the TMDL program DEQ was developing the process of how to do TMDLs and there was a high staff turnover rate; now there is more emphasis on getting the TMDLs done.

Marc Vessar asked if there are any TPA's that have enough data to meet the high criteria for resource priority on the ranking criteria? Robert Ray said there are some that have high scores but do not have perfect scores. Marc Vessar asked if there was a way to bump those TPA's up to help meet the quota of 10 per year? George Mathieus said he is counting on the STAG Committee to give guidance on how to speed up the TMDL process.

Doug Parker asked about the 5 TMDLs in draft form that DEQ is not planning to get out until next year, why is that? Robert Ray said they are not going to get out until next year because of public comment, cleaning the documents up and internal review before the TMDLs go out. Doug Parker said to DEQ needs to get the documents out and limit the time of public comment. John Youngberg asked if the input of shareholders is not enough? Does MEPA require more than that? Robert Ray said DEQ runs the TMDL through stakeholder process before the document is sent out for official public comment. Claudia Massman said the TMDL law only requires DEQ to contact the CD's and hold a meeting in the area, but does not have a specific public comment period. Robert Ray gave the example of the Teton where it was put out for public comment and people wanted 60 days to review and comment on the document. Doug Parker said DEQ needs to keep to the court ordered schedule and not let people delay the process. Art Compton said DEQ tried to keep to the schedule on the Sage Creek TMDL and things became complicated and DEQ is still trying to fix the problem.

Allan Rollo said as a watershed coordinator, he knows the people in the watershed groups want to be able to look at the TMDL more closely and make sure that there is enough guidance while there is the interest, momentum and money to implement it.

John Youngberg said some suggestions for DEQ were, 1) Continue with TPA's or watershed areas, 2) Get 10 TMDLs done a year, 3) Focus more on the

development of the TMDL and not on implementation, 4) Watch out for perfection paralysis, and 5) Rosie's section needs to move through reassessment.

Bruce Sims said the Forest Service has a number of negotiated agreements with DEQ and EPA to work on TMDLs. There is cost to the Forest Service when they work with TMDLs. There may be a way, with State's oversight, of making other documents suffice for TMDLs. The Forest Service is making advances in the ability to model. Monitoring will validate the models and if the models are working it accelerates the Forest Service's ability to write TMDLs, particularly for sediment.

Brian Sudgen said to bump up the TMDLs that already have enough data on them. Bob Bukantis said one of the reasons DEQ went to the watershed approach was so that the focus did not need to be on what list to use. DEQ can go back and reassess the waters in the planning area and make a determination if the waters should be on the list or not.

John Youngberg wanted to clarify that DEQ was using the 2002 list because the court threw out the 1996 list. Claudia Massman said legally there is nothing that prevents DEQ from using the newest list. John Youngberg asked if the stream is not on the 2002 list, their land use activities shouldn't be able to be stopped on that stream? Bob Bukantis said some of the streams were not listed for pollutants but for habitat degradation, which don't require an EPA approved TMDL.

Robin Cunningham said watersheds with a lot public involvement should be started early. If DEQ segregates the implementation part of the TMDL from the need to get the document out, DEQ can present the TMDL to the stakeholders with a timetable and indicate that there is a chance for the group to stay involved in the long run.

John Bloomquist said DEQ shouldn't get bogged down by particular issues, the Upper Big Hole is a great example. Barb Butler said DEQ should give the areas that are more problematic to EPA. Dave Debats said DEQ needs to look more at what Idaho is doing. Robert Ray said Idaho gave them a paper on the process Idaho is taking. John Bloomquist said maybe John Youngberg should go to Idaho and report back to the committee on what is happening down there. Darrin Kron said it all comes back to the funding problem. John Bloomquist said the STAG committee should be an ally for the funding problem the TMDL program is having.

Robert Ray said the requirement for the 5-year review is causing a problem. This is an additional resource demand. Bruce Sims said the real mistake is the public doesn't realize that a TMDL doesn't have to be perfect. Art Compton said DEQ asked the Sage Creek people to work with DEQ and let the TMDL be submitted to EPA for final approval. DEQ will work with them on the 5-year review process.

Update 2004 303(d) and 305(b) Consolidated Listing Guidance and DEQ's Development of the 2004 303(d) List.

Terry Wadsworth went through a 2004-Listing & Reporting power point presentation (see attached power point presentation and presentation notes).

The guidance recommends submitting an integrated report between the 303 (d) list and the 305 (b) report, which DEQ currently does. The SCD/BUD process does not categorize waters. The 303(d) Coordinator has categorized all of the waters that are currently in the ADB (Assessment Database) that DEQ has. DEQ is working at categorizing the waters as they come through the SCD/BUD process for this next listing cycle. Category 5 is for TMDLs that deal with the pollutants.

Bob Bukantis said Category 4b is what the committee was talking about earlier. EPA says if a Federal Land Management Agency has a process in place, all necessary BMPs are going to be applied, the authority to see that the BMPs are applied and a plan to carry them out so that all of the water quality standards are met, the stream can come off of the Category 5 list and into Category 4b waters. Category 5 waters require a TMDL.

Art Compton says DEQ should look for opportunities to use this federal guidance. DEQ needs to take an aggressive position on this guidance to help us manage our workload and divide our existing lists up into other management categories.

Rosie Sada said DEQ is now in the process of reviewing all of the SCD/BUD's for the 2004 list. DEQ has received comments from the public on 64 streams, 36 were comments from the BLM, the rest were from the Columbia Basin.

319 Grants

Robert Ray stated that there is about \$1,140,000 to do TMDL planning and \$760,000 to do implementation, education and information projects, etc. DEQ has cut the TMDL planning grants away from the rest of the process. The Water Activities Work Group (WAWG) that helps look at the 319 projects, have an October meeting scheduled to review the TMDL planning projects and give feedback to DEQ. The rest of the grants will be reviewed by WAWG in January.

Brian Sugden asked if Category 4b is where the Forest Service is trying to work with DEQ to get some of the waters in that Category off the list before the deadline of April 1st? Bruce Sims said it was discussed. John Youngberg thought that was an excellent idea to get some of the waters off of the list. Terry Wadsworth said that DEQ will get them off the list but is this another ploy to dodge the TMDL schedule? Brian Sugden said it is another way to get things done. Bob Bukantis said if EPA has given DEQ another way of doing a document without calling it a TMDL to get a plan for Water Quality Standards in place and given DEQ an alternative to a formal TMDL, which uses the forest planning process, it should be a defensible position. Bruce Sims said he has talked to the Regional Forester in regards to an aquatic consistency paper, which is a forest plan, and the Forester felt that this could meet water quality standards.

Doug Parker asked when the water falls off of Category 5 list and becomes a Category 4c habitat alteration, is there another place where those waters can be picked up in terms of developing a remedy for the habitat issue if there is no TMDL process? Bob Bukantis said EPA gives DEQ a guidance on how to write the list. This falls into what EPA did when DEQ submitted a Big

Creek TMDL dealing with flow; EPA applauded DEQ for doing a water quality restoration plan but it is not going to be a TMDL. TMDLs are to be done for pollutants and not for pollution (where the pollutants are not specifically identified). If there is not a specific pollutant identified then it is put into Category 4 and DEQ addresses it as part of Non-point Source program rather than part of the TMDL program.

Other Issues

Robert Ray said DEQ was looking at how to address the court schedule. Is it realistic to expect that DEQ will see resource changes? Is it realistic to look at additional Federal, State or private resources to be augmenting the resources DEQ has to help do additional TMDLs? John Youngberg said any help is going to come from Federal sources because of the State budget. It does not seem realistic. Robert Ray said that he was looking at the watersheds where there are individuals that want to get something done in the watersheds and are willing to do whatever it takes. John Youngberg said there will be some people who are willing to do what it takes to get the TMDLs done. DEQ should take advantage of the people who are willing to help out in the watersheds. Rob Ament said it may be more appropriate to go to the Congressional Delegation in 2006 with what resources are falling short of meeting the court appointed schedule. Robert Ray said it takes 3 years to do a TMDL so getting money in 2006 would not help, DEQ would have to go to the Congressional Delegation in 2004 to help with the TMDLs.

Next Meeting

John Youngberg said that he would like to have a meeting before the end of the year to look at how things are progressing. The best time would be the end of November. November 25th may be a good time.

The meeting was adjourned at 3:00pm.