

9:00 to 12:00 AM Monday 18 April, 2005

Statewide TMDL Advisory Group

Director's Conference Room (Room 111), Metcalf Building, Helena

Meeting Summary

ATTENDEES:

Group Members:

John Youngberg, Chairman, Montana Farm Bureau

Bruce Sims, USFS

Robin Cunningham, Fishing Related Business

Gary Frank, DNRC

Joe Gutkoski, Montana River Action

Doug Parker, Hydrometrics

Marc Vessar, Soil & Water Cons. Dist. W

Terry McLaughlin, Smurfit-Stone

Stephen Granzow, Soil & Water Cons. Dist. E

Brian Sugden, Plum Creek Timber Co.

Christine Brick, Clark Fork Coalition

Frank Pickett, PPL Montana

Others:

Robert Ray, DEQ

George Mathieus, DEQ

Dean Yashan, DEQ

Julia Altemus, MT Logging Ass.

Introductions:

Chairman John Youngberg called the meeting to order at 9:15 a.m. A round of introductions was performed. John Youngberg reviewed the previous meeting summary and agenda, Mark Vessar asked that his representation be changed from DNRC to Soil and Water

Conservation Districts W and then passed. Terry McLaughlin was introduced as taking over for Dave Debats.

Update on Water Quality Planning Bureau Staffing (George Mathieus)

Data Management is now fully staffed. There is a modeler on board. There is some one in charge of the 303(d) list/Integrated Report. There was a half FTE that was turned into a full-time FTE, which manages the database library and web base management. The monitoring section filled three vacancies over last fall and there is only one vacancy remaining.

The Planning Section has been split and an Implementation Section has been created and Robert Ray is the new section supervisor for the Watershed Protection section. This section will be handling all 319 Non-point sources, Information and Education and the implementation and five-year review of the TMDLs. This section should help with gaining efficiencies so that the Planning Staff is not working on projects that are outside of the TMDL issue. Dean Yashan is the supervisor for the Watershed Management Section.

George said they revamped the advertising strategy for publicity on job vacancies. George stopped using the newspapers except for two newspapers and took more advantage of the internet and email to the Universities and other Job Search websites.

With the huge decision package that DEQ submitted to the Legislature, the Water Quality Planning Bureau asked for general fund dollars that would support five permanent FTE's and four one-time only FTE's. DEQ put in a request for money for the modeling efforts on the larger rivers across the state and for the database management work that DEQ is doing. Legislation is going really well and it looks like none of our money has been cut.

DEQ put in for Authority money from EPA but DEQ is not sure how that is going on the Federal side. DEQ usually has more authority money than general cash.

Brian Sugden asked if an updated Organization Chart could be sent out with the next monthly update.

The fieldwork plans that are set up, do not include the four staff that has been requested. EPA is going to help with the large river monitoring and they will help with some of the wadeable streams. There seems to be balance of staff out in the field and staff in the office doing the analyses.

Update on TMDL Submissions and Approvals (Robert Ray/George Mathieus)

DEQ's internal goal last year was to get 80 TMDLs completed. That constituted 6 or 7 Planning Area documents. The TMDLs that were submitted for public comment in November were: Grave Creek, Bobtail, Big Spring, Ninemile, Bitterroot Headwaters, Dearborn and Flathead Headwaters. These TMDLs were submitted to EPA in January. The Sun TMDL was submitted to EPA in December for approval without doing a second Public Comment Period. The Sun has been officially approved. The Bobtail and Ninemile have both been reviewed in detail. The total of the TMDLs are at 95. DEQ had planned for 120 TMDLs this year but it looks like there may be 180 done this year. The two-phased plan is on schedule.

With DEQ getting ahead on the Two-Phased Plan it looks like the amount of TMDLs needing to be done will come down in number in the following years. DEQ has started with TMDLs that could be done more efficiently because of work going on in the basin. George said DEQ is revamping the way they are planning for the TMDLs so that DEQ can schedule the TMDLs appropriately.

John Youngberg asked where DEQ was with the Tongue-Powder TMDL? George said DEQ met with EPA in late March where EPA provided DEQ with a draft document. Hanging Woman Creek was used as an example to follow all the way through the Tongue-Powder. It looks like DEQ is on schedule with the Tongue-Powder. What is holding up the TMDL is the politics.

Brian Sugden asked which of the completed TMDLs were EPA led TMDLs? George Mathieus said the Flathead Headwaters and Dearborn are EPA led TMDLs. EPA is helping more with data collection and reassessment data collection. DEQ and EPA had a big meeting last week with the TMDL people to talk about what worked last year and what didn't. EPA is still leading

TMDL efforts in Fort Peck, Lower Missouri, Lake Mary Ronan and the Yaak. EPA has had more problems than DEQ in getting resources. Ron Steg has been the only person at EPA to work on the TMDLs. DEQ is trying to implement more of a team approach with EPA working more on getting TMDLs done. Ron will help train the new employee at DEQ so that Jim can take over. DEQ will be getting more staff and more resources from EPA to get TMDLs done rather than depending on EPA to finish the TMDLs. The planning areas that have international borders or tribal borders, DEQ is looking at keeping EPA as the lead on those TMDLs. EPA will probably be responsible for 1 or 2 TMDLs per year.

Joe Gutkoski asked if DEQ considers Thermal Pollution in the TMDLs? George Mathieus said DEQ does look at Temperature. Our standards clearly state that the stream cannot have more than a one-degree difference. DEQ is taking a look at what other states are doing with Temperature and seeing if DEQ can come up with a better more attainable standard. DEQ is looking at what temperature is natural and what isn't. DEQ is looking at the standards and seeing what is more workable for DEQ. If it involves changing the standards than maybe DEQ needs to do that. Some states have a five-degree change that seems more attainable than one degree. Some of the problems have been meeting the needs of different species of fishes.

Doug Parker asked on temperature issues how DEQ deals with water rights relative to what is natural? George said DEQ is not required to address flow alterations, which is a pollution category on the 303(d) list. In some cases flow alterations may impact some of the issues of temperature. DEQ is not supposed to deal with Water Rights period. If flow alterations are causing pollution, then it does become one of the issues. Robert Ray said legally we do not have a right to require change on flow alterations. DEQ has not reached the point of addressing flow alterations.

Doug Parker asked how DEQ was defining natural? Is DEQ taking the data that is available for the last few years and calling that natural or is DEQ trying to estimate what it would be without pollution effects? George said DEQ is using a little bit of both. In the Bitterroot there was a lot of stream data for temperature. DEQ did an analysis that just dealt with vegetation. If shade is the primary influence on temperature in the Headwater streams, where is there not a lot

of shade? What caused it? What is the potential on this site for a tree or other vegetation? The natural condition could be all the way up to 70% but in reality there is balance that occurs with the stream. It ends up being modeled. Robert Ray said with respect to our standards, natural means all reasonable land, soil and water conservation practices. Hydrologic studies look at the irrigation efficiencies and practices being implemented in that basin and determine if the all of the reasonable conservation practices are practiced in the basin. If not, then that is where the TMDL process comes in. Part of finding a consistent standard is going to come from modeling.

Bruce Sims said there is a chance that people can lose their water rights if they do not use the right amount of water. Landowners become wary of not using their water to the fullest extent. In Montana there is a program that FWP helps landowners to voluntarily use conservation methods and the state will protect their water rights even though they are not using all of the water. Bruce is not aware of any western state that uses the Water Quality Act to determine water rights.

John Youngberg said there was legislation passed that adjudicated water rights from the appropriations that have been made. Adjudication means that the State will review how much water the user will get. Appropriation means that you can ask for any amount of water.

Christine Brick asked if there were any comments coming back on the TMDLs that were submitted in November on the narrative standards? Dean Yashan said those kind of comments are very common and usually do come back on the submitted TMDLs. Are the narrative standards evolving? George Mathieus said yes.

Update on TMDL Settlement and Plaintiff Meeting (George Mathieus)

One of the requirements from the settlement is that DEQ had to produce a schedule by December 18th. The approach DEQ took was to make the schedule so it will be done annually. The Schedule was done by December 18th and then DEQ had 60 days to meet with the plaintiffs. DEQ met with the plaintiffs on January 13th at the EPA office. The meeting went really well. DEQ spent a lot of time presenting the two-phased approach to the Plaintiffs and discussing how to

better disseminate information to the public. Some good suggestions were made on how to get out the public draft. There may be similar meetings with the Plaintiffs annually.

John Youngberg said there may be merit in doing a press release. George said DEQ is trying to stagger the TMDLs and getting some out in mid-year and some out in October. DEQ is trying to give more notice of when TMDLs are coming out. DEQ does put the TMDLs on the web page but also try to notify people by sending out cards on the status of TMDLs. DEQ is trying to notify the commentors to acknowledge and thank them for their comments. DEQ will also notify the commentors when the final TMDL is coming out.

Discussion of DEQ and EPA Led TMDLs and Future TMDL Planning "Assignments"

(Robert Ray, George Mathieus)

DEQ has turned the corner on the approach with putting most of the workload on EPA. DEQ is trying to incorporate more of a team concept. There is going to be more training sessions with EPA and DEQ staff to sit and discuss what is going on with TMDLs. Cut Bank-Two Medicine was taken back from EPA and DEQ decided to finish it with Ron being the mentor, using his expertise with models. George said that DEQ was discussing developing templates. Does it make more sense for the group to sit down and discuss the ideas instead of just making a document that will sit around on the shelf? DEQ has decided to do a debriefing on the TMDLs.

DEQ is recognizing that the contract management is more difficult. DEQ is getting some dependable contractors on a list, but the list is too small. DEQ is thinking about having training for consultants on TMDL issues. Brian Sugden asked about how DEQ is going to absorb EPA's efforts on the TMDLs? George said DEQ has not sat down and planned out for the other years. EPA has done the TMDLs that they have been given to date. The only one DEQ had to absorb is the Cut Bank-Two Medicine. EPA worked at a lesser extent on this TMDL. Gary Frank asked if DEQ is looking at the idea of EPA not getting any more resources to work on TMDLs? Or is the allocation including EPA getting more resources? DEQ did not plan that far in advance to make it specific to who was working on which TMDL. DEQ and EPA has only looked at the short term of 2-3 years in that much detail. Dean said right now DEQ and EPA are focusing on where they are

at right now and how they can make the deadline. The constraints on EPA is mostly budget constraints but also time constraints.

John Youngberg asked if the committee could get another spreadsheet outlining what DEQ and EPA is doing in regards to TMDLs today. Dean said that he would focus on getting the people hired and then come out with an update of where DEQ is at and where EPA is.

The major concern with the department is budget concerns. If the money is there DEQ is able to get the TMDLs done. DEQ is putting plans together but George has to make sure there is money available to fulfill the whole plan. There was help when the Decision Package went to the Legislature for the budget. But DEQ is waiting on the Authority Funds.

Julia Altemus felt that a letter of thanks should be sent to the Congressional Unit for the help that was provided with the budget this year. John Youngberg asked if the committee would be in agreement with him drafting the letter and sending it in. Doug Parker agreed with the letter.

Bruce Sims said he could empathize with the budget constraints that EPA is going through. The Forest Service is struggling with the same thing. Now that appropriations are tied into the Interior budget, there is not a lot of attention for individual states. EPA has taken a big cut in this year's budget and in the 2006 budget. EPA is not going to be a big financial contributor.

Update on Foundational Elements (George Mathieus)

George said part of the two-phased plan is to sit down and decide what tools DEQ was missing. Build up the tools to help DEQ go up to doing 200 TMDLs in a year. Some of the tools that have been developed are a water quality standards template, conceptual training and talking about some of the issues. DEQ recognized that there was a need for a reference database. A huge effort was done this winter to combine all of the reference data that DEQ has. The next step is combining other agencies data into the database. DEQ is working on organizing so that searches can be done by basin. The work is going to be focused on combining data from other sources and identifying data gaps.

Michael Pipp said a couple of programs that have been done are the data management systems which are improvements to how the data is recorded for the 303(d)/SCD/BUD listing. An

Environmental Analysis that was done last summer. There is an RFP out for contractors to develop the system from DataRev 7 to the assessment database and SCD/BUD listing. The data management section would like to have a contractor selected and working on the project by the middle of the summer. DEQ hopes to have the database developed and online within a two-year period. DEQ has a variety of modeling tools that are in the process of development and getting them to a point where the DEQ staff can apply the tools to documents. There is a contract with NRIS to re-school the environment site. NRIS should redevelop and rename the website with a new look. There should be an interactive GIS map involved in the site.

Terry McLaughlin was wondering where the Cost/Benefit factor comes into the TMDL? George said there has been a considerable effort to figure out how much the TMDL will cost, and how much is being spent. DEQ is figuring out that the TMDLs are costing around \$9000.00. DEQ needs to look at where the potential impacts are on the watershed and if there will be some watersheds that will only need a low cost effort to develop TMDLs. DEQ needs to take into account what the realities are, are there irretrievable commitment of resources out there and what are the costs associated with those commitments. Terry defined his question to ask is there an actual budget comparison with the benefits? George said there is not a requirement to do the Cost/Benefit analysis with the implementation. Michael Pipp said that in the EPA 305(b) report requirements, one of the elements EPA would like to see in the report is a Cost/Benefit analysis of all the costs associated with the water quality measures in the state. There is one Economist working on defining the Cost/Benefits of water quality measures for the 2006 305(b) report. Doug Parker asked if DEQ could look at the House Bill 546 that Brian Sugden talked about where it requires the Cost/Benefit analysis and report back to the group in the update? The Watershed Protection Section's job is to dwell on the implementation portion of the TMDLs. This section may be the one to look at the Cost/Benefit portion of the TMDLs.

Bruce Sims added that EPA guidance does not give DEQ legal standing but the focus should be put on the state law.

Brian Sugden asked about the Watershed Protection Section doing the 5-year assessment and what the section's role will be? Robert Ray said he has not had the time to sit

down and think about what the section's role will be because he was in charge of two sections. He is just in the beginning of developing a work plan for the section. There is a 319 Project that deals with the 5-year review for the Big Creek TMDL where the local group has an initiative to help with the review and looked at the targets and how the creek improved. George says that DEQ is working with the Sage Creek Group on implementing the TMDL with additional monitoring and projects on the ground. The five-year review is not needed until the TMDL is implemented according to the state law.

Bruce Sims said the Forest Service has developed a data set with PIVO monitoring in the Columbia Basin and Northern Idaho. It is a dataset that has been collected at 288 data sample points that were randomly selected. The dataset measures physical channel parameters and aquatic vertebrate. There was an analysis to see how many watersheds were covered by this dataset (the dataset covered 131 watersheds). The study found significant differences in parameters in the managed and minimally managed streams. Temperature was higher in a managed stream than in a minimally managed. Number of pools per linear distance is higher in the managed than in the minimally managed. It is the best-sized database that Bruce knows about. Some of the results could be used on a TMDL. It is available on the web. Bruce thinks that DEQ and the Forest Service should talk more about this program. This web page can be found doing a "Google" Search on the word PIVO. DEQ met with Bruce at the end of March to discuss with the datasets. There is another meeting planned for next month between DEQ and the Forest Service to talk about the program again.

Update on 303(d) List Category 4(b) listing (George Mathieus)

George said DEQ met with the Forest service on the March 25th. A joint effort between DEQ and the Forest Service found that the process to use Category 4b was going to be a little bit more of a struggle to get where they wanted to be. There were three areas where efficiencies could be gained, 1) there were multiple streams that are not on the reassessment list but far out on the TMDL list that the Forest Service or other constituents have collected enough data to reevaluate the stream; 2) Other areas where constituents are working on big projects (EA and

EIS) where the TMDL efforts can run parallel and 3) Finding a suitable place to do a Category 4b case study. Taylor Fork was the case study to see if Category 4b would work. The draft review is in progress. DEQ is at a point where the document is at a satisfactory level. There was a lot of progress made in the last three to five months.

Bruce Sims has a question of whether state law will support the Category 4b action. The language in the law is not very clear. Category 4b is basically binding the agency that develops the report to do the repair work to meet report requirements.

Some of the difficulties with 4b is that a report needs to be done accurately and the questions that need to be answered by the report are the same as the TMDL document. DEQ has to show that the water quality standards will be met. DEQ wants to avoid litigation on the Category 4b documents.

Brian Sugden asked what the point of the case study is when DEQ is basically doing the same work as developing a TMDL? George said the feeling of DEQ and EPA is that a Category 4b is basically a TMDL. DEQ is looking at the TMDL areas that the work has almost been finished. DEQ has to prove that the restoration work is going to be done and that it will improve the water quality impairments. EPA has put together a report on Category 4b.

Joe Gutkoski said there is a major effort on the Taylor Fork by the landowners to buy the grazing allotments from the Forest Service. Bruce Sims said the Taylor Fork has a pretty complex issue where the Forest Service is not sure what is causing the impairment. Bruce is pretty confident that the Taylor Fork will be listed no matter what. George said it always makes sense to go with asking the question of whether the stream is impaired or not.

Doug Parker asked if DEQ is checking into whether the law supports Category 4b or not? Is someone checking if just a rule change is needed to make Category 4b usable? George said it is on his list of things to do.

Public Comments

Marc Vessar and Brian Sugden said they are very happy to see the progress that DEQ has made.

Frank Pickett would like to plug back into the committee. He would like an update on the Missouri and Madison TMDLs. He would like to know the boundaries of the TMDLs.

Robin Cunningham said the increased manpower is a positive move. Gary Frank said the DNRC would like to be involved in the Category 4b meetings to keep up to date with what is going on.

Julie Altemus said that the progress DEQ has made is greatly appreciated. She asked about the progress on the Bitterroot? George said the Bitterroot had intense public comment involved with the TMDL. He is anticipating getting it out in April.

Next Meeting

The consensus was to meet in October again. Keep up with the status reports so that the Committee is up to date on what is going on.

Agenda Items that were suggested were the approach to the 5-year review and work plan and another update on the status of Category 4b.

Meeting was adjourned at 11:45.