

Statewide Total Maximum Daily Load (TMDL) Advisory Group (STAG)
Meeting
June 20, 2001 10:00 a.m.- 3:00 p.m.
Fish, Wildlife and Parks Commissioner's Conference Room

ATTENDEES:

Council Members:

John Youngberg, MT Farm Bureau
Joe Gutkoski, Montana River Action
Gary Frank, MT Department of Natural
Resources and Conservation (DNRC)
Larry Van Rinsum, Conservation District-West
Luther Waterland, Conservation District-East
Doug Parker, ASARCO
Barb Butler, City of Billings
Dave Debats, Exxon Mobil
John Bloomquist, MT Stockgrowers Ass.
Tim Bozorth, Bureau of Land Management

Other Attendees:

Ron Steg, MT Department of Environmental
Quality (DEQ)
Bob Bukantis, DEQ
Claudia Massman, DEQ
Frank Pickett, PPL Montana
Pete Schade, Montana Watercourse
Brian Sugden, Plum Creek Timber Co.
Jim Bauermeister, DEQ
Terry McLaughlin, Smurfit-Stone Container
Bob Raish, DEQ

Approval of Minutes

The meeting was called to order by Chairman John Youngberg at 10:00 a.m. Approval of the minutes from the December meeting was dispensed of. A round of introductions was preformed.

TMDL Lawsuit Update

Claudia Massman said that after Judge Molloy's last ruling; EPA, the state, and interveners filed in appeals in the ninth circuit. The ninth circuit assigned the parties to a mediation office to try to reach a settlement. The settlement negotiations are over and Friends of the Wild Swan are ready to begin briefing with the ninth circuit sometime in September. The state has decided to withdraw their appeal because Judge Molloy was only requesting what the law required. The appeals main points consisted of doing TMDL for everything on the 1996 303(d) list by 2007 and the injunction against new or increased permits until all necessary TMDLs are completed. The court clarified the injunction and enabled DEQ to decide if a TMDL is necessary. The first milestone is in December when the first block of TMDLs are due to be completed.

Luther Waterland asked when would the reassessment of the waterbodies that came off the list be done?

Bob Bukantis said that with the staffing challenges and helping with TMDL development it is a slow process of reassessing the waterbodies, but there are people currently out in the field working on the reassessments. The waters needing reassessment in TMDL planning areas scheduled to be completed this year and next year are the priorities that need to be done this season. It will take several years to catch up with all the reassessments and DEQ must prioritize which ones will be done first according to the schedule.

Claudia Massman said that in the lawsuit challenging the Environmental Protection Agencies (EPA) final TMDL rule, EPA has adopted the changes to the rules as the state proposed them. The main issues to the rule was EPA imposing implementation plans as part of the TMDL on non-point sources (NPS) with reasonable assurance that the TMDL will be done in a set number of years and applying antidegradation rules to the TMDL process. EPA was very receptive and agreed to change the rules. The rules are on hold for a year until revisions can be made.

Court Ordered Schedule

Ron Steg passed out the TMDL schedule, a Bitterroot Headwaters TMDL planning area work plan and a TMDL status sheet.

Ron Steg said that creating the schedule has changed the priorities and actions of DEQ. Partnerships with other agencies and watershed groups are being formed to help DEQ meet the deadlines. For each TMDL planning area out to 2003 detailed schedules and work plans are being written. Preliminary problem statements for each TMDL planning area will be developed three years in advanced to summarize everything DEQ knows about the 1996 and 2000 303(d) lists and provide interested groups the reasons the waterbodies are on the list, the data used and data gaps. This will assist in creating work plans, creating partnerships and getting the TMDL projects started.

For 2001, forty-eight MPDES discharge permits were submitted to EPA as point source TMDLs and are still awaiting EPA approval. Three creeks have been submitted as NPS TMDLs, Careless Creek and Lonetree Creek are waiting for EPA approval and Big Creek has been approved by the state but is waiting for EPA approval. Big Creek is impaired for low flow, which is something EPA is not concerned about but under state law it is an impairment that DEQ is required to improve. TMDLs are supposed to focus on pollutants but there is no clear distinction between pollution and pollutant. Some impairments may cause other impacts that can make the stream unhealthy, which state laws requires TMDLs to be done to improve the situation.

Doug Parker suggested making the work plan schedules and the list of responsibilities publicly accessible. The general public will want to know what is going on in their watershed and how it will effect them. The internal guidance that DEQ is developing may be something the council would like to look at.

Ron Steg said that currently we are working with conservation districts. They are helping to get stakeholder meetings scheduled to involve the people on a planning area by planning area basis and getting the information to them. The guidance is a work in progress and will change as the regulations and rules change. When components are completed they can be made available to the council. The internal guidance is a technical document that may be of some use outside DEQ in creating a team approach to TMDLs.

Brian Sudgen asked if it was necessary to send pollution TMDLs to EPA for approval if they are not concerned with it? Is there any clarification from EPA indicating that they still wish to approve these TMDL?

Bob Raisch said that DEQ did request a clarification from EPA on the issue. DEQ is still waiting for a letter from EPA on their decision. Regardless of having EPAs approval DEQ will complete the TMDL.

Ron Steg said that there are some projects for individual waterbodies in progress that were started before the schedule was made or started because interested parties wished to move forward and complete a TMDL before the scheduled date. Even though a watershed approach is being taken, each individual waterbody must be addressed for its particular impairment. TMDLs for all the listed waterbodies in the planning area must be completed by the scheduled date. EPA will receive a document on a TMDL planning area scale regardless of when individual TMDLs were done. Future projects will be done on a planning area scale but there will always be individual waterbody TMDLs when the interest is there, the need is there and it is reasonable to complete the TMDL.

Larry Van Rinsum asked what was the concern with the 319 Grant involving the Endangered Species Act?

Bob Raisch said that all federally funded 319 projects must go through the Endangered Species Act before they can be approved. This will not be a factor for most projects but some projects will be delayed and it may cause problems meeting the schedule.

Ron Steg said that the Sage Creek component of the Big Sandy TMDL planning area will be done ahead of schedule and DEQ has sufficient data to complete the TMDL planning area by the 2001 deadline. Cooke City, Flathead Lake, and Lower Musselshell TMDL planning areas are on target and will be completed on schedule at the end of the year. The intent is to get a final draft out early enough to allow two or three months for review. When the drafts are completed and meet the necessary requirements, they will be made available to the public on the web site.

The prioritization of the 303(d) list helped determine when TMDLs would be completed. Other main factors DEQ looked at in creating the schedule included the level of known ongoing activity, number of reassessments, number of high priority waterbodies, types of land use activities and land ownership. The more complex TMDL planning areas were put later in the scheduled. These and other factors created the schedule that DEQ must use.

Doug Parker asked how are new streams or streams that were put back on the list through reassessment added to the list?

Bob Bukantis said that if they were reassessed streams coming back for the pollutants they were previously listed for on the 1996 303(d) list, they must follow the schedule. New waterbodies or new pollutants that were not on the 1996 303(d) list have ten years from the time they were added to the list to be completed.

Brian Sugden said that it is under the discretion of the advisory group to decide whether or not to apply the criteria factors of prioritization in the TMDL statute and reexamine how closely the current system matches with the factors. It is within the prerogative of the advisory group to make recommendations to DEQ if individual planning areas appear inconsistent with the groups' charge under state law.

Bob Raisch said that since the judge has seen the schedule, minor modifications can be made but major change may be more difficult to make.

John Youngberg suggested the council members review the schedule and see if any waterbody is noticeably out of order according to the prioritizations and bring those to the next meeting for discussion.

DEQ Updates

MACD Meeting

Bob Bukantis passed out an outline of the Montana Association of Conservation Districts (MACD) meeting minutes.

Bob Bukantis said that at the MACD meeting an update of the TMDL program was presented. There was some discussion on the turnover of employees at DEQ, 303(d) listings, pace of TMDL development, regulatory implications, private land issues, economics, working with environmental groups and funding. After the meeting it was discussed how there is some missing communication between DEQ and the conservation districts and watershed groups. It was agreed to set up a facilitated meeting with these groups and provide them information about the program and answer questions that may arise.

Pete Schade passed out a briefing for a TMDL User's Manual.

Pete Schade said that in talking with various watershed coordinating councils, DEQ and others about the need for TMDL Information and Education (I&E) documents it was decided to develop a brochure and a TMDL pilot workshop with the main targets being conservation districts and watershed groups. There are currently 319 grants in progress to fund these two projects. There were also suggestions on creating a TMDL user's manual specifically for conservation districts and watershed groups on how to get involved with the TMDL process and the different avenues they may take. EPA has shown some interest in helping fund the development of the user's manual project. It still needs to be determined who would be involved in creating this document and who would be interested in this document.

Luther Waterland said that it is a very good idea as these groups are asking questions concerning TMDLs. This document will clear up misinformation and help answer questions. This will be a very time consuming project because Montana is such a large state but it will be worth the effort.

Jim Bauermeister said there is a similar document out there produced by the Corn Growers and Soybean Growers in the mid-west. The Clean Water Network recently released a publication nationwide for citizens on how to get involved with the TMDL process. This may be used as a model to do a Montana specific document.

Bob Bukantis said that under the Water Quality Act, TMDLs would be done using conservation districts and watershed groups. Oversight and training on proper water sampling techniques must be supplied to the public who assists in gathering data to ensure that the data is credible. The groups who do collect the data for DEQ must follow rigorous quality assurance and quality control requirements that are written in the contract with them.

John Youngberg confirmed that this is a document the council would be interested in looking at when a draft is available

USFS Meeting

Ron Steg said that DEQ is working with the U.S. Forest Service (USFS) to complete the TMDLs in USFS lands. DEQ is informing USFS of the schedule, the priorities and in which areas DEQ will be working. This helps both agencies meet their individual Clean Water Act requirements. The first step in fostering this partnership is developing preliminary assessments and problem statements in the TMDL planning areas where there is large USFS land ownership.

Gary Frank said that DNRC is not being recognized as a major stakeholder. DNRC needs to be informed of what is going on. There needs to be a better way of identifying major stakeholders and getting them involved with the TMDL process. The unit level management section needs to be notified because with top management it may never reach the people who need to be involved.

Ron Steg said that DNRC would be included in the technical advisory committee when it is formed. This committee will finalize the work plan together as the first step of the process.

Bob Raisch said that upper level management needed to be notified as well to give the unit managers the permission and prioritization to proceed with the project.

TMDL Program Staffing

Bob Bukantis and Ron Steg passed out organization charts for their individual bureaus.

Bob Bukantis said that in the Monitoring and Data Management Bureau (MADM) there are two monitoring coordinator positions that are vacant that were previously filled. Michael Pipp moved to fill the TMDL modeler position. There are also two new TMDL monitoring coordinator positions opened July 1st and close July 11th. There is a smaller hiring pool for filling these positions and the applicant's lack the experience and education needed, so the positions may be opened as training assignments. There is also a new QA/QC position and environmental monitoring assessment position (EMAP) opening on July 1st. The EMAP position is a five-year project funded by EPA to do some general monitoring around the state. There has been some discussion to reorganize the MADM Bureau and the Resource Planning Protection Bureau (RPP) to put the water elements from both in one bureau and the air elements and other components in another bureau. This will allow those people who work closely together to be in one place.

Ron Steg said the situation with the RPP Bureau is similar to the MADM Bureau. There are two TMDL coordinator positions that are vacant that were previously filled. The NRCS liaison will become vacant in August because of budget constraints placed on them. They can no longer afford to have this

position. There are two new TMDL coordinator positions, a liaison position with Montana Department of Transportation, and a NPS grant coordinator position opening up on July 1st. Getting these positions filled is not critical in completing these years TMDL requirements but will be necessary on getting a lead on future TMDL projects.

2002 303(d) List

Bob Bukantis passed out a handout about considerations and options for the 2002 list.

Bob Bukantis said that on April 1, 2002 under current EPA regulations another 303(d) list is due. DEQ may resubmit the 2000 303(d) list based on the considerations laid out in the handout. EPA approved the 2000 list in January of 2001 even though DEQ was not required to submit the list. It is still unsure what the current EPA's format and regulations regarding the 303(d) list are. Regardless of submitting a new list DEQ is still required to use the 1996 303(d) list for developing TMDLs. EPA is appealing the use of the 1996 303(d) list, but this may not be resolved for several years. DEQ would prefer to put all their effort in getting the TMDLs done on time.

Doug Parker said that DEQ should talk to the Friends of the Wild Swan to ensure that focusing on doing TMDLs and not submitting a new list is not going to result in another lawsuit.

The council passed a motion indicating DEQ's focus should be on completing TMDLs to meet the schedule and not on working on a 2002 303(d) list.

STAG Vacancies

John Youngberg said that there are seats open for forestry and conservation/environmental groups that need to be filled. A letter to the director needs to be sent regarding appointing a new conservation/environmental group member to STAG. Frank Pickett will need to have the director to appoint him to represent hydropower. The Forest Service and others who wish to attend and have a real input are welcome to come.

Bob Raisch said that Frank Pickett would have to be nominated by those in the hydropower industry and have a nomination letter sent to the director of DEQ to have him appointed to the council.

Brian Sugden said that he would talk with the logging association and woodcutters and see about getting appointed to STAG.

Miscellaneous Items

Ron Steg said that the 201 TMDLs would be in the final stages in October.

John Youngberg said that a choice of dates in October would be sent out later to decide when the next meeting would be held.

Jim Bauermeister said that on July 11th the Montana Watershed Coordination Council is giving watershed stewardship awards during a luncheon at the capital. The lunch is seven dollars and there will be a brochure mailed out to everyone.

Suggested agenda items included having Federal Land Management representatives give the council an update on where they are on TMDLs and having DEQ give an update on coal bed methane (CBM).

Chairman John Youngberg adjourned the meeting at 12:40 p.m.