

MID-SNAKE WATERSHED ADVISORY GROUP
DRAFT
Meeting Minutes

Department of Environmental Quality
650 Addison Avenue West, Suite 110, Twin Falls, Idaho
Tuesday, April 11, 2017, 2:00 p.m.

Attendees

Paul Abbott – Idaho Power
David Anderson – DEQ, Twin Falls Regional Office
Almin Ardic - IMP
Adolfo Arredondo – City of Hansen
Gary Ashby – Forsgren
Jack Bennion – CH2M
Brad Bjerke – HDR Engineering
Israel Boekweg – City of Hansen
Mark Bowen – CH2M
Jason Brown – City of Twin Falls
Michael Brown – DEQ, Twin Falls Regional Office
Sonny Buhidar – DEQ, Twin Falls Regional Office
Shawn Burton – High Desert Milk
Barry Burnell – DEQ, State Office
Scott Bybee – City of Buhl
Ira Dillman – City of Hansen
Peggy Dortch - Agropur
John Draybeck – EPA – via conference call
Craig Eaton – US Fish and Wildlife Service
Don Essig – DEQ, State Office
Jackie Fields – City of Twin Falls
Regie Finney – City of Buhl
Gary Fornshell – University of Idaho
Jean Gorringer – City of Burley
Kevan Hafer – City of Kimberly
Don Hall – Twin Falls County
Alan Hansten – North Side Canal Company
Justin Hayes - ICL
Jim Henderhan – Evaqua Farms LLC
Phillip Henderson – Evaqua Farms LLC.
Brad Henry – City of Jerome
Dane Higdem - Glanbia
Dee Hodge – City of Burley
Brian Hoelscher – Idaho Power
Austin Hopkins - ICL
Shell Howard – DEQ, Twin Falls Regional Office

Chris Jeszke – Idaho Fish and Game
Todd Kirkendall – Lamb Weston
Lisa Kusnierz – US EPA
Gary Lemmon – Blind Canyon
Mike Lidgard – US EPA
Randy MacMillan – Clear Springs Foods
Chris Mebane – US Geological Survey
Shawn Moffitt – CH2M
Dean Moreno – Fish Breeders of Idaho
Andy Morton – Clear Springs Food
MaryAnne Nelson – DEQ, State Office
Dave Noel - Forsgren
Brian Olmstead – Twin Falls Canal Company
Chuck Pentzer – Soil and Water Conservation Commission
Susan Poulson – US EPA
Erika Powers – Barnes and Thronburg, via conference call
Christine Psyk – US EPA
Leo Ray – Fish Breeders of Idaho
Clarence Robison – University of Idaho
Travis Rothweiler – City of Twin Falls
Gilbert Sanchez – City of Jerome
Christian Schmidt – US Geological Survey
Dan Suhr – Mid Snake Commission
Cassie Sundquist – Idaho Fish and Game
Sue Switzer – DEQ, Twin Falls Regional Office
Brian Thompson – Idaho Fish and Game
Travis Thompson – Barker, Rosholt & Simpson
Mike Trabert – Chairman, Recreation
Tom Vantassel – Evaqua Farms LLC.
Jim Werwtz – US EPA
Jeff Williams – WAG Grazing
Mike Woodguard – US EPA
Leigh Woodruff – US EPA
Jim Woods – City of Hansen
Paul Woods – Woods Consulting Group
Rob Young – Evaqua Farms LLC
Jim Younk - Idaho Power

Welcome

The meeting of the Mid Snake Watershed Advisory Group (WAG) was called to order at a little after 2:00 p.m. by Mike Trabert, WAG Chairman. It was announced that the meeting was being recorded. John Draybeck, EPA, and Erika Powers, City of Twin Falls legal counsel joined the meeting by phone.

WAG Business

- The minutes on the May 11, 2016 meeting were reviewed. Andy Morton made a motion to accept the minutes as written. Brian Hoelscher seconded, and the minutes were approved unanimously.

EPA's Decision on Mid-Snake TMDL & NPDES Permits

Christine Pike, acting director of the Office of Water and Watersheds in EPA Region 10 in Seattle, led the presentation. She started by introducing the EPA team attending the meeting: Leigh Woodruff, TMDL program in Boise; Susan Poulson, NPDES permitting in Seattle; Jim Werwtz, director of Idaho Operations Office in Boise; Mike Woodguard, manages the NPDES program from Seattle; Lisa Kusnierz, NPDES unit based out of Boise; and John Draybeck, permit writer in Seattle. It was stated that Lisa will be the contact for the general permits for the aquaculture sector.

EPA is here at the invitation from Idaho DEQ because of conversations they have had expressing EPA's concerns about the current TMDL for the Mid Snake. Flow assumptions are much higher than what the TMDL was written for. EPA hired Tetra Tech to do a re-assessment. The Tetra Tech report confirmed that the flows in the TMDL that were used to set how much loading of phosphorus could be allowed were 1.5 to 3 times higher than the actual flows that were measured in the river. The river does not meet targets based on the data, specifically in the macrophyte growth. EPA cannot rely on the TMDL to meet standards through permit renewals. EPA is concern with the technical soundness of the TMDL, and they have been urging DEQ to revise the TMDL to correct the flow assumptions so they can be assured that the TMDL will meet water quality standards.

EPA cannot continue writing permits based of the TMDL until a new one is developed and corrections made. If permits were issued now, they would be water quality based with limits that would achieve of total phosphorus at end of pipe of 00.075 mg/l. EPA does not want to have to do that, but they believe that is the course that is technically sound and defensible. DEQ has presented EPA with a proposed 2-year schedule to complete the TDML revision. If the commitment and milestones to revise the TMDL were established, EPA would monitor the progress of the TMDL before they issued permits. However, without this commitment EPA will move forward with water quality based permits (00.075 mg/l) starting with Jerome Cheese. These permits would include compliance schedules. If the TMDL was done in two years, the permits could be modified before the limits came into effect. That could be done whether EPA or DEQ were the permitting authority. EPA is here to urge the WAG to expedite initiation and completion of a revised TMDL.

Leigh Woodruff presented an overview of EPA's concerns with the TMDL. Excess macrophyte growth in the Snake River continues to be a big concern. Nutrients causing those growths need to be controlled. Many studies show that total phosphorus is the main nutrient causing the problems with macrophytes. The findings from the Tetra tech data assessment and evaluation were that there is still significant macrophyte growth through the reach, Snake River flows have been declining, phosphorus levels were not meeting the target, the highest concentrations are in the middle of the reach, and the flow assumptions in the current TMDL exceeded the flows that had

been observed in the past 10-15 years. A load capacity comparison table summarized the point EPA is making. EPA does not think the allocations in the TMDL would meet the target given the current river flows.

Susan Poulson presented a picture of what a water quality based end-of-pipe permit might look like. The target criterion in the TMDL is 0.075 mg/l. This limit of 0.075 mg/l phosphorus at the end of pipe would be applied for all point sources in the watershed. It would be an average monthly concentration. For public owned treatment works (POTW) and Jerome Cheese facilities, there would also be applied loading limits based on the design flow of the facility or the production flow. This approach has no flexibility as with a TMDL. There would be a compliance schedule.

DEQ Response & Planning

Barry Burnell, Water Quality Division Administrator, presented DEQ's position. EPA has had at least four opportunities to disapprove the TMDL, but it was approved each time, the DEQ board has approved the TMDL, and a district court has approved the use of the TMDL. The position of DEQ is that the agency has put a lot of effort into this particular TMDL. If EPA feels strongly enough about the TMDL being flawed, then DEQ would ask EPA to withdraw approval of the Mid Snake Rock TMDL. If that were to happen, the schedule Christine spoke of would identify the timeline to move forward. If the WAG would advise DEQ to revise the TMDL, then we would undertake that activity. An alternative option, EPA could use the existing TMDL as the basis for NPDES permitting using the waste load allocations that are in the approved TMDL. They could look at facility upgrades that have occurred and the current DMRs that have TP in them as a basis for updating their NPDES permits.

WAG Questions & Discussion

Justin Hayes– Does DEQ disagree with EPA's conclusions regarding flows and math they are using to get to the loading capacity and the implications for the existing waste load allocations-- are there any disagreements about facts?

Barry Burnell – I believe that the water years selected by EPA have been accurately represented.

Travis Thompson – What years did Tetra Tech use for the analysis? Who decides what years to use for the revision?

Leigh Woodruff – Tetra Tech used data from two ranges 2000-2009 and 2000-2013. They tried to use the most current data available. The years used for the revised TMDL is open for discussion. TDMLs need to account for a reasonable worst case scenario in order to meet water quality standards. Another way to write a TMDL is to calculate using a flow load direction curve approach. That is a choice the state could make.

Gary Fornshell – The target is a 30% reduction of aquatic macrophytes. What's the baseline for the aquatic macrophytes and what's the metric visual, grams dry matter per square meter? Has the baseline been measured over the years? Can anyone state what the coverage of aquatic macrophytes is in the Mid Snake besides narrative?

Sonny Buhidar – baseline for the macrophytes was driven into the RBM10 model. Sonny will look up that information and follow up.

Brian Hoelscher –Is there a consideration given for a user survey to define nuisance level, similar to Boise River TMDL? What is the evidence of low DO throughout the Snake River?

Leigh Woodruff – The original TMDL referred to low DO levels in association with the macrophyte beds. The user survey would be a state call in terms of how they interpret the water quality nuisance standard.

Leo Ray – The goal in the original TMDL was to reduce the macrophytes by 30%. At no point has it been said whether the macrophytes were reduced, instead you switch to an arbitrary number of 0.075 TP. We don't know if that reduces the macrophytes. If we are reducing the macrophytes, we are meeting the goal that was set forth in the TMDL.

Leigh Woodruff – The original TMDL concluded that if you met the 0.075 target it would cause that reduction. The focus is on phosphorus because it is a surrogate driving the macrophyte reductions.

Sonny – The only information we have on macrophyte growth was done by Mike Falter from the University of Idaho in 1992-1994. That information was woven into the RBM10 model and the 0.075 target was established because of output of the RBM10 model.

Mike Trabert - The 0.075 has been used for 20 years, is there an anti-backsliding? If we reevaluate the TMDL, can that number go up or does it have to remain the same as what the river has been set at?

Sonny – 0.075 is not a water quality standard; it is a target for the TDML.

Mike Lidgard – There is a prohibition of backsliding in permits in general. However, new information can be used in justifying backsliding in a permit in certain situations.

Christine Pike – That would be a huge lift; a lot of time and scientific effort would be needed to make such a claim.

Brian Hoelscher – Is 0.075 an annual average in the TMDL? Susan mentioned that the water quality based would be a average monthly. What is the rational to switch the time frame?

Leigh Woodruff – The TMDL does not say what the average period is. If you look at how fast things grow in the river, there can be double the biomass in less than 30 days. We are thinking about shorter average time spans (a month or less) to meet a target and establish eligibility.

Chris Mebane – I recollect the TDML target of 0.075 was selected by splitting the difference for lakes and rivers in the old EPA gold book of 1986. It would be very difficult to tie a concentration of phosphorus with macrophyte growth in the river. He suggests that the group go forward focusing on the objective. Is the objective 0.075 or what would it take to reduce macrophytes in the river.

Randy MacMillan – If the TMDL were to be opened, what would the scope of the reopening be? Is everything fair game?

Sonny – It is my understanding that if the TMDL were opened today, it would be for phosphorus. The emphasis would be on waste load allocations and pollutants of concern. Flow would be whittled into that.

Paul Woods – We have a legal opinion that is different than EPA on whether or not an effluent limit can simply ignore an approved TMDL. But if EPA disapproves the TMDL and nothing is on the table, then a water quality based effluent limit needs to be met at end of pipe for everyone. Given the two choices, reopening the TMDL seems to be a better option.

Brian Hoelscher – Macrophytes seem to be the concern in the river. It is not as simple as water column total phosphorus. What happens if the TMDL is reopened and we exceed this 20 month time frame?

Christine Pike – The scope of the reopening is up to the state. We have identified the flow as a problem. If it takes longer because the scope is broader, permitting would continue with end-of-pipe limits and compliance schedules. If the TMDL were completed before the compliance schedules come up, the permits could be modified.

Travis Rothwieller – The challenge we have is not being able to pinpoint a target. If you start with an end-of-pipe number and then go through a TMDL process, which then those numbers can be elevated, we are already starting a programming process for a lower number that now all of that effort is for naught. Cities in Idaho have to go through a rigorous process to find monies to pay for the project that is going to be designed for something that may not be real at the end. I don't think it is fair to ask this group to look at revising the TMDL and still issue permits with compliance schedule that we are expected to go forward with.

Christine Pike – EPA's main interest is that DEQ embark on the revision to make the corrections to the TMDL. If that were to occur tomorrow and a schedule was developed with milestones, EPA with discretion would be very mindful of the progress being made in developing that TMDL before we move forward with permitting. EPA wants to see progress. Right now there is no movement in either direction, and we cannot just sit on permits indefinitely.

Dane Higdem – We invest a lot in infrastructure and communities. We have a TMDL that appears to have been upheld several times, and now EPA says you have to change it. This causes a large amount of changes in infrastructure. If we do not have an exact point that we are aiming at, that leaves us with time and money ill spent and is not very wise going forward.

Christine Pike – EPA is not suggesting that the state reopen the TMDL and reopen the question of the target. However, corrections to the TMDL for the flows and then recalculations of the loading capacity and the appropriate allocations that would meet that loading capacity could revise what the various sources would have to meet. We are not suggesting that the target be changed.

Leo Ray – If industry could establish that there has been a 30% reduction in macrophytes in the river, would you still require a revision of the TMDL?

Christine Pike – I think it would be very difficult to explore, and it would have to be done very carefully. If a target that a TMDL sets is met and we can verify that in a scientifically sound way, then it is taken off the list as an impaired waterbody. At this point we have no indication that the targets in the TMDL have been met.

Brian Hoelscher –The concern seems to be macrophytes. The WAG offered a letter to DEQ contradicting the Tetra Tech report that there isn't that strong linkage between phosphorus and macrophytes. We all want to do the right thing, but we want to know that we are spending the money for the right thing for the right reason.

Leigh Woodruff – Reevaluation of macrophyte levels is not an easy thing to do. You are going to see variations from year to year. It would take quite some time to make that evaluation. If you look at the study that Chris has, you have flow, temperature, sunlight, sediment and nutrient that effect macarophytes growth. But one of the conclusions was that the epiphytes that are growing on these macrophytes are driven by water column phosphorus. At times, they are more than half the mass of the macrophytes in the summer. When they decompose, the phosphorus goes down into the sediment and the rooted macrophytes are picking it up. Phosphorus is clearly one of the things driving the growth of weeds and can be controlled.

If the TMDL is not reopened does that mean that all permits (municipal, industrial, aquaculture, etc.) are written to the 0.075 limit?

Christine Pike – Yes

Jackie Fields – Could there be a consideration for a schedule of progress rather than a 20-month rewrite of the TMDL? Is the 20 months firm or is there flexibility?

Christine Pike – Twenty months is not fixed. EPA did not come up with that number. It is coming off a potential draft schedule that DEQ submitted. The time frame needs to be reasonable. What would you propose?

Travis Rothwieller – If this group were to make a commitment to open the TMDL and the group followed the benchmarks that were set, would you commit not to issue any permits? Our concern is that you would issue end of pipe as your starting. If the revised TMDL comes up better for us than end of pipe, we might find ourselves in court for anti-backsliding.

Christine Pike – EPA cannot make that kind of commitment. If the TMDL is opened with milestones, EPA will look at progress being made before they move forward with permits.

Mike Trabert – The WAG is not writing the TMDL; we are advisory only to DEQ. If there is a 20 months target, it is DEQ's target. The question before us is whether to reopen or not reopen the TMDL to look at phosphorus and flows. In each case we know what the consequences are.

How long does the WAG have to make a decision before EPA starts to write these end-of-pipe permits? Does EPS intend to issue industry permits regardless of the decision?

Christine Pike – We would like a decision soon. We will move forward with Jerome Cheese for very particular reasons. But the other permits we will wait to see what your decision is and decide whether to move with permits.

Clarence Robison – What I am hearing from DEQ is that unless EPA disapproves the TMDL or unless the WAG says let's modify the TMDL, they will do nothing. The WAG has had the presentation and we need to come up with a decision whether or not we are going to recommend to DEQ to reopen and modify the TMDL. Do we have a schedule for making that decision? Are we going to pull in a special WAG meeting or wait until the next one?

If the WAG's decision was to counsel DEQ to reopen the TMDL, What would prevent EPA from issuing permits at the current waste load allocation in anticipation of what the revised TMDL would look like?

Christine Pike – The question is what will the final TMDL look like? We will monitor and use discretion, but we will not make a commitment until we have a TMDL.

Brian Hoelscher – Is our scope to only consider what EPA has proposed in that the flow will be looked at and load allocations adjusted or is the other stuff that Barry talked about for EPA to withdraw the TMDL and we develop a technically defensible TMDL? What is our Scope?

Mike Trabert – Our scope is whether this group is going to want to reopen the TMDL or not. That scope will be clarified at the next meeting.

Christine Pike – The withdrawal is up to the state. If they would like EPA to withdraw the TMDL, they would need to ask EPA. EPA does not self-initiate withdrawals.

Justin Hays – What is the basis of the disagreement between DEQ and EPA about withdrawing the TMDL? Is there any legal basis or are both agencies standing fast?

Christin Pike – We don't have a mechanism to withdraw and we don't have experience with withdrawals.

If you look at a TMDL and you say it is flawed and not working, and you don't use the TMDL for permit issuing, isn't EPA by in fact saying they have withdrawn the TMDL.

Christine Pike – No. It is still up to the state. It is the state's TMDL.

EPA is issuing permits to meet water quality standards because the TMDL is flawed.

Paul Woods – The point the state made that was on the table was that there is an option to continue to issue the permits with the waste load allocation in the approved TMDL while the TMDL is under revision. Hopefully that is still part of the dialog as a possible path.

Justin Hays – It is our understanding that EPA would be going through lots of legal challenges if they were to be knowingly issuing inaccurate permits.

Leigh Woodruff – If EPA disapproves a TMDL, by law it is EPA who has to reissue it. If you want to change who is writing this TMDL and have EPA do it with disapproval, that is what would happen.

Motions and Adjourn

Randy MacMillan made a motion that the meeting be adjourned and the WAG meet again in a month to decide what direction the WAG will take. Jason Brown seconded the motion.

Discussion: That would give the fish farmers, industry, and others a chance to talk with their constituents and get an idea where they want to go. The next meeting was set for May 2 at 2 p.m. A vote was taken and the motion was passed.

The meeting was adjourned by Mike Trabert at approximately 4:20 p.m.

WAG Chairman

Approval Date