



## Montana Association of Conservation Districts

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Mr. Chairperson and members of the Montana Environmental Quality Council: My name is Mike Wendland. I am a dry land farmer near Rudyard and have been elected to serve on the Hill County Conservation District for many years. In addition, I currently serve on the Montana Association of Conservation Districts (MACD) Board of Directors and I am the immediate past president of MACD.

Thank you for the opportunity to speak before you today regarding the TMDL program in our state. This is a topic that has been concerning Conservation Districts (CDs) for many years and we appreciate the opportunity to share our thoughts with you.

Not surprising in a state as diverse as ours, there are diverse views among CDs regarding this program. I want to be clear that there are some CDs that—so far—are satisfied with their TMDL interaction with DEQ. And, there are some CDs that—so far—are not at all satisfied with their TMDL interaction with DEQ. Most CDs fit in somewhere between the two extremes. I want to assure the Council that CD supervisors take their role seriously as locally elected officials tasked with assisting their constituents address natural resource issues. Regardless of what happens to the TMDL program overall, CDs will work with DEQ and EPA locally—at whatever level is possible and the CD feels is appropriate—to meet the requirements of the law.

As CDs have been attempting to do this all across the state, MACD has been contacted regarding problems with how the program is currently being administered and requests that efforts be made to address those problems.

Many of you are familiar with the work CDs in your area accomplish and I would like to provide some additional background on how districts function. Montana's 58 CDs are state-created political subdivisions whose boundaries usually follow the state's county lines. Five elected supervisors, and two appointees from incorporated communities within the CD boundaries, govern the districts.

CDs have a decades-long history of conserving our state's resources by helping local people match their interests and needs with available technical and financial resources, thereby getting good conservation practices on the ground and benefiting all Montanans.

CDs have state-mandated responsibilities such as management of the 310 Law, water reservations, coal bed methane effects monitoring, stream access portage routes, county planning board participation—and as is being discussed today—local TMDL consultation.

The work of CDs also helps meet the federal mandates regarding local input on the administration of the farm bill. CDs also address general natural resource issues such as saline seep forest management and health, rangeland management, noxious weed control, rural economic development through RC&Ds, drinking water development and protection, drought mitigation, irrigation water conservation, fire restoration and prevention, natural resource education for adults and children, and regional watershed planning such as the Yellowstone River CD Council and the Missouri River CD Council.

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July 19, 2004

Ex. No. 8

As you can see, CDs deal with numerous, varied, and potentially controversial issues. This is all being accomplished so successfully that legislation had been introduced during the last three Montana Legislative sessions that required CDs to take on even additional responsibilities for the state. It should be further noted that all of this work is accomplished by non-salaried elected supervisors meeting often times only once a month and CD staffs that usually consist of one, often part-time, person. How is this possible? It works now for the same reason it has worked for 60 years, because of the dedication of those involved and the trust local people have in the conservation district to approach issues in a balanced and fair way.

Consequently, CDs are motivated to be very judicious with the time they spend on any single issue so they can continue to successfully cover all of the topics their constituents have elected them to and expect them to do well. *This has been nearly impossible with the TMDL program because of its continuing unclear expectations.* At a recent meeting, DEQ Director Jan Sensibaugh addressed the MACD Board of Directors regarding this topic. When asked by a supervisor whose CD is currently involved in the early stages of TMDL work if a list of what exactly has to be in a TMDL plan is available, Sensibaugh responded, "no but we hope we will have that soon." To CD Supervisors with many immediate issues at hand, this kind of response does little to generate interest in working on TMDLs.

Furthermore, it does little to build confidence in the seriousness of public input to the program. It has been repeatedly stated that that the court order will be met regardless and that is understandable. However, it has also been repeatedly stated that public input is important—if not critical—to the success of non-point source water pollution reduction plans. But, seven years into the program, there still is no list of what has to be done for each TMDL plan. If that list doesn't even exist, how can the public determine how they want to participate? The sidebars either do not exist or do not remain constant.

As you may recall, in February of this year, the "Citizen's Handbook on TMDLs" was put on hold for at least couple of months because future public participation and some technical elements of the TMDL plans have not been determined. In April, the Committee tasked with reviewing the draft manual was notified that work on the manual has been put on hold because of the significant changes expected in the program but some parts might be available to review in July.

In early May, MACD representatives met with Jan Sensibaugh and her staff as well as EPA and NRCS staff to discuss TMDLs. At that meeting, it was stated that DEQ and EPA staffs worked for six weeks in January and February to put together a comprehensive plan for accomplishing the TMDL program objectives. This included a new approach for public input. When asked if the CDs and other stakeholders could see what they were planning and provide comments, we were told that is wasn't ready yet for public distribution but they would share it with us in early summer. We have not received anything to date and it is now July 19.

Undoubtedly there are explanations for all of these things that may be out of the control of EPA and DEQ. The largest likely being constraints on information distribution because of legal negotiations with the plaintiffs of the lawsuit. It was not my intention to generate a series of responses from EPA and DEQ regarding why each particular circumstance came to pass. Quite the contrary, we acknowledge there may be extenuating circumstances.

Rather, I shared them with you because they perfectly demonstrate why it has been difficult for CDs to really embrace this program, we don't know—for sure—what is expected and what the consequences will be. CD supervisors take their responsibility to their constituents very seriously. They will not dedicate limited CD resources to any process or project—or assist governmental entities in gaining access to private landowners in their CD—until they know some details. Many supervisors don't feel comfortable taking on TMDLs in their area because of repeated examples like those I mentioned.

MACD feels that there has been a recent genuine attempt by DEQ to have better communications with the CDs. We particularly appreciate Jan Sensibaugh's willingness to meet with us and we hope to continue this kind of dialogue. However, as her response regarding the current non-existence of a TMDL requirement list indicates, creating opportunities to communicate directly and openly is important and CDs welcome the opportunity to do so, but if the message continues to be so ambiguous, I do not anticipate significant changes toward the TMDL program.

The amount or quantity of communication opportunities may not be the problem; the quality of the communication's content itself may be the issue. This leads directly to the first question the panel has been asked to address.

**(1) Is it necessary that public input be gathered in the same manner it has in the past—regardless of the amount (of time) that it takes to do so?**

Clearly, the manner that has been used in the past is not possible, nor would I say desirable. There are instances when CDs that have dedicated resources toward TMDL activities to then wait months, sometimes years, to get a response from DEQ. Much has been made of the DEQ field staff attending numerous meetings and the drain that puts on their ability to complete all of their tasks and it is understandable that this kind of meeting attendance will not be possible in the future because of time constraints.

However, I suggest the number of meetings has not been the problem. Rather, the information the DEQ staff has been sharing with the local CD has been. *There continues to be no clear and unequivocal list of requirements of TMDL plans.* Until that fundamental need is met, it won't matter how many meetings are held, most CDs will resist full-scale participation.

The second question the panel was asked to answer is:

**(2) At what point in the process should public comment be taken?**

This is difficult to answer as it is unclear what the new TMDL program is going to look like. There is no public information available on what the "points in the process" are going to be. However there are minimum requirements that I believe should be met regardless of what form the program takes.

- A) The CD should be notified when the work is beginning on TMDLs in their area. This notice must include:
  - 1) What exactly is going to be done on the ground in the area?
  - 2) What exactly is expected to be included in the plan?
  - 3) When the work is expected to be completed and
  - 4) When the draft TMDL plan is expected to be submitted to EPA.
- B) The CD should also be notified when a copy of a TMDL plan, prior to its submission to EPA, is available for review and comment. This notification should allow adequate time for both serious review and comment. Anything less than 30-40 calendar days would prohibit serious input. Those comments should then be adequately addressed prior to the plan being submitted or included as an official part of the submission.

I want to emphasize that I believe these are minimums; after being notified about the work beginning, the CD should be able to determine their level of involvement based on the anticipated timeline, the work needed to be completed etc.

CDs understand that in light of the timeline—whether the deadline imposed by the court is 2007 or 2012—the opportunity for real meaningful public input is not possible for most nor is adequate data gathering on all streams. Nevertheless, CDs must have the opportunity to comment on what is being submitted to EPA, if for no other reason than to point out that there wasn't time to put the plan together appropriately.

The third question the panel was asked to answer is:

**(3) From your group's point of view —is it necessary to expedite the TMDL process in Montana?**

Clearly, there is no other option than to expedite the TMDL process in Montana. There is no way to continue at the current rate and meet the court deadline. However, I want to be clear that expediting the process does not mean that local CDs will be rubber-stamping plans developed by a computer program in Helena. As described above, at a minimum, CDs want the genuine ability to comment on what is being submitted to EPA for their watersheds.

I believe the remaining four questions:

- (4) How will TMDLs be done from this point forward—with regard to public comment and other areas?
  - (5) Who will be doing the TMDLs—DEQ or EPA?—Why?
  - (6) Will the agencies be doing the work or will the work be contracted out?
  - (7) What is the deadline for having all of the TMDLs on the 1996 303(d) list completed?
  - (8) How are TMDLs that are not party to the lawsuit going to be completed and are the time frames realistic?
- are more appropriately answered by other panel members.

In conclusion, I would like to summarize the 6 major points in my comments.

- 1) **CDs are not obstructionists** and regardless of what changes may be made in the program, each CD will work with DEQ and EPA locally at whatever level is possible and that the CD feels is appropriate.
- 2) The number of times DEQ or EPA communicates with a CD is not the remedy for local participation. **The quality of the communication has been a consistent problem** and is what has to change. Until a list of required TMDL plan elements is made publicly available, there will not likely be significant increases in local TMDL participation.
- 3) The **CDs appreciate DEQ's efforts to open a better dialogue** on the state level between MACD and Director Sensibaugh and her staff and hope it continues.
- 4) The **CDs understand the complications caused by the lawsuit** but stress that we are hesitant to delve into a complicated process like the development of a TMDL plan without more solid information up front.
- 5) CDs understand that in light of the timeline—whether the deadline imposed by the court is 2007 or 2012—the opportunity for **real meaningful public input is not possible nor is adequate data gathering possible.**
- 6) Consequently, because this ideal is not possible, MACD feels the CDs should be able to—at a minimum—**comment on the completed plan prior to it being submitted to EPA,** and have those **comments included as an official part of the TMDL plan.**

Thank you for your consideration of my comments regarding this important program.