
Water Pollution Control Advisory Council Meeting Minutes

Room 111 Metcalf Building Helena

November 5, 2009

10:00 A.M.

COUNCIL MEMBERS PRESENT

Council Members present in Room 111: Dude Tyler (Chair), Scott Anderson (alternate for Karen Bucklin Sanchez), Earl Salley

Council Members joined by teleconference: Corey Fisher, Terry McLaughlin, Roger Muggli, Michael Wendland, Kathleen Williams,

Presenter Laura Gabanski from EPA joined by teleconference.

Council Members not present: Richard Hoehne, Stevie Neuman, Trevor Selch, Karen Bucklin Sanchez

Department of Environmental Quality (DEQ) Personnel present: Bob Bukantis (Council Secretary), Water Quality Planning Bureau (WQP), Planning, Prevention and Assistance Division (PPAD); Joe Meek, Technical Financial Assistance Bureau (TFAB), PPAD; Jenny Chambers, Permitting and Compliance Division (PCD), Water Protection Bureau (WPB); Barbara Kingery, Public Water Supply (PWS), PCD.; Rod McNeil, WQP, PPAD; Mark Bostrom, WQP, PPAD; Dean Yashan, WQP, PPAD; Robert Ray, WQP, PPAD; Vanessa Redmond, WQP, PPA; Carrie Greeley, WQP, PPAD

Others: Rich Mulder, Dept of Agriculture, Amy Bamber, Dept of Agriculture

CALLED TO ORDER

Chair Dude Tyler called the Water Pollution Control Advisory Council meeting to order November 5, 2009 at 10:03 a.m. A quorum was present

Agenda

Dude asked for a motion to approve the agenda. Roger made the motion and Earl seconded it. A voice vote was made and the motion carried.

Meeting Minutes

Dude asked for any changes or additions to the meeting minutes from the June 25, 2009 meeting and he asked for a motion to approve.

Kathleen had one change on page 13 in the last paragraph above the public comments. It says "She also commented to acknowledge the surface water/ground water connection especially the in the sharing of aquifers." Kathleen said it should read "surface water/ground water connection especially in tertiary alluvial aquifers".

Dude asked for any other changes or additions and asked for a motion to approve the meeting minutes with Kathleen's change. Earl motioned, Scott seconded and a voice vote was made with the motion carried to approve the meeting minutes with Kathleen's changes. Motion carried

ACTION ITEMS

Review/Selection of the Chair Person for 2010

Dude asked for nominations for a WPCAC chair person for the upcoming year. Terry nominated Dude and Dude asked for other nominations. Terry nominated Trevor, because he is located in Helena and would be a good liaison for the group in general. Trevor was not at the meeting to accept the nomination. Terry asked to postpone the vote until the next meeting until Bob could talk to Trevor and find out if he would accept the nomination. Terry said he was willing to continue in a vice-chair capacity. Bob said that he would talk to Trevor to see if he would accept the nomination. Dude asked the motion to close the nominations and postpone the vote till the next meeting after Bob talks to Trevor. Earl made the motion, Scott seconded it, a voice vote was made and the motion carried to postpone the chair vote till the next meeting.

Select the Date of the First Meeting of 2010

Bob provided some information on the background of WPCAC. Prior to the making of a rule going to the Board of Review (BER) the Montana Water Quality Act states that it needs to be reviewed by WPCAC to provide an opportunity for the Council to comment. WPCAC meets a month prior to each Board meeting to make comments and recommendations to the Department.

The expectation of the first Board meeting next year is January 29. Bob recommends that the Council's first meeting of 2010 be January 7th. Dude asked for a motion and approval of the next meeting of the Council to be January 7, 2010. Earl made the motion, Scott seconded, voice vote was made and the motion carried for the first meeting of the Council to be January 7th in Room 35 of the Metcalf building, Helena.

BREIFING ITEMS

Healthy Watersheds

Kathleen provided a lead into this topic by saying that this initiative from EPA is in helping to keep clean waters clean so they do not end up impaired, and that it seems like an efficient method for the State to think about not just what's impaired, but also how to protect things from becoming impaired. She wanted the Council to hear about this new initiative so they could see if there are areas that might provide some additional resource or opportunities for Montana associated with this initiative.

Laura Gabanski with EPA's office of Wetland Association Watersheds heads up the healthy watersheds initiative. EPA has no programs that are protection focused and so a need was recognized that would emphasize protection conservation as well as restoration of impaired waters. The water quality standards were designed to be protective, but this approach really goes beyond that and takes the latest science and methods that are out there to protect our aquatic resources.

Laura presented a [PowerPoint presentation](#). The national assessment of water quality completed across the country in the wade-able streams assessment in 2006 showed that 42% of our nation's stream water is in poor biological condition and 25% is in fair biological condition. Impaired waters are increasing at an alarming rate and analysis showed a trend that the number of impaired water has increased 1.5 times from 1998-2006.

Dude asked what a wade-able stream was. Laura said it is described as something you can walk across.

Laura said that it is cost effective to prevent aquatic ecosystems and species from becoming impaired in the first place. It is very expensive to restore impaired waters and if we can keep them from becoming impaired and keep them in healthy condition we can avoid these huge costs of trying to restore them. By doing this we protect habitats for fish and wildlife by providing good water quality and maintaining critical watershed functions. Another benefit is avoiding destruction of infrastructure to natural hazards from flooding, minimizing impacts from flooding, fires and other natural disasters. There was a study that came out that showed that we can reduce or even eliminate the cost of water treatment for drinking water by protecting aquifer recharge systems and surface water. They found that for every 10% increase in forest cover, the storage treatment chemical cost decreased approximately 20%. Climate adaptation and ecosystems store carbon which can offset carbon emissions, but also the more we keep river corridors intact the better position they are going to be to store the flood waters from increased precipitation. Healthy systems reduce vulnerability to invasive species, because they can't compete in areas that have not been disturbed, and are in really good natural condition.

Terry made the comment about invasive species not being able to compete if the water body has not been disturbed or is relatively good and clean, but what if an invasive species was accidentally introduced into a pristine water body wouldn't it be able to take hold. Laura said that it was a good point and what she had in mind when she mentioned that was that on floodplains in particular invasive plants wouldn't have very much of a chance to compete or take hold because of the natural flow regime and flooding cycles. She said if an invasive species was introduced it would probably take off.

Laura said their approach is strategic and that they want to help states identify healthy watersheds and portions of watersheds that are still healthy and need protection and they want to develop tools to conduct integrated assessments to help identify these healthy watersheds and help promote implementation and protection conservation programs so they can maintain good water quality. Montana has several examples of this in the work that they do with wetlands and the Wetland Council.

Laura said what they are trying to do is balance the amount of effort we put into restoring impaired waters with trying to keep waters healthy. The statewide focus is important because if they can generate this information to a statewide basis it gives local counties and watershed groups a place to start in terms of information to protect these resources.

The State of Maryland is actually in the process of redoing a green infrastructure assessment. Maryland has a program called Greenprint where they have funds available to purchase key practices. Obviously, you know sometimes these lands are obviously in private holdings and they have a program if private landowners are interested, to apply for funds to put these lands into conservation.

Dude asked if these examples of simple purchases, and conservation easement purchases are developed land purchases and where the funding was coming from. Laura said in Maryland's case, it came from the state legislature. Maryland is kind of unique as it has a state planning agency and Maryland has really been the lead in terms of smart growth and conservation.

There are a couple of ways to conserve and protect watersheds. Examples being habitat protection through purchased development rights, conservation easements, active programs like river corridor protection programs that work with localities, state conservation tax credits and land stewardship programs. In the future EPA would like to have a national workshop, regional workshops or webinars to exchange ideas on what works and what doesn't around the country in terms of trying to protect

these systems. They are developing a healthy watershed technical guide that will go through the various methods that are available to assess healthy watersheds and include integrated assessments and management options.

Joe Meek with MT DEQ's Planning, Prevention and Assistance Division, Technical Financial Assistance Bureau (TFAB) asked about possible future funding for this. Laura said they have a request for this fiscal year but they don't have their appropriation yet for EPA, but should be getting their FY10 budget pretty soon. They've requested resources for some state pilots, and in the mean time they are working on a couple of other ways of funding this work more sustainably and that is using the SRF clean water state revolving fund and 604b resources so that it can be used for assessment and watershed or water planning at the state level as well as the base funds for 319. They are looking at a guidance frame for that and revising the guidance so they would hopefully be able to support states through this kind of work on a more regular basis. Joe said that Montana DEQ would be interested.

Kathleen asked if those funds would be in addition to funds that are already coming for 319 work or are they talking about realigning. Laura said they are expecting a doubling of 604b funds. There may be additional resources to do this and similarly there may be some increase in 319 funds as well.

Kathleen asked about criteria for the state pilots. Laura said they have not developed the criteria yet, but from initial discussions on this what they are looking for at minimum depending on the level of funding is to have an example of a healthy watershed protection conservation implementation assessment. She is not sure of exactly what it's going to look like in terms of the number of states, but basically her management would like to do is show the use of these as demonstrations to show the success of using this approach.

Roger asked to be able to speak with Laura on a one to one basis about water quality in eastern Montana caused by coal bed methane dischargers and gave some of his background information on his work with the irrigation district in eastern Montana. Laura provided Roger with a telephone number to contact her for a conversation concerning that at a future time.

Scott Anderson, is an engineer and has been working since '78 building wastewater facilities and municipalities or helping get them built and they have been primarily funded with funds from the clean water act with billions of dollars spent on investments. He presumed that water quality was improving, becoming less impaired, yet Laura's slides suggest that they are becoming more impaired and there are less fish, or less diversity of fish. Scott asked if this investment over these years was misplaced or inadequate, or he wanted hear comments on dealing with point sources. Laura said what they are trying to do with the healthy watershed approach is to use other tools to help improve, and to help protect the water that is in really good condition. They want to take a more holistic systems approach to protecting water quality. Right now they rely a lot on the water quality standards and any kind of biocriteria that have been developed and look at the biological health of streams to protect what's still in good condition. They have done national surveys that show overall what's going on and may not be reflective of any particular locality. They are trying to work across and work with other people and take a more integrated ecosystem approach to protecting aquatic ecosystems keeping these systems and identify what threatens the ecosystems, and how to deal with them and fish passage.

Robert Ray from DEQ's WQPB, PPA asked about a future presentation and exploring the possibilities in the future to the Watershed Coordination Council. Laura said she'd be happy to do that.

TMDL Update

Dean Yashan gave a TMDL Update using a [PowerPoint presentation](#). The last update given was back at the February WPCAC meeting and since that time the EPA has approved around 120 TMDLs. These included the Shields TMDL (4 TMDLs: all Sediment), Boulder - Big Timber (15 TMDLs: all metals), Upper & North Fork Big Hole River (24 TMDLs: 19 sediment; 4 nutrient; 1 temperature), Middle & Lower Big Hole River (71 TMDLs: 30 sediment; 10 nutrient; 28 metals; 3 temperature) and the Upper Jefferson Tribs (6 TMDLs: all sediment). The Lower Blackfoot TMDL which has 12 TMDLs (9 sediment, 1 metal and 2 temperature) is at the EPA review stage. The Upper Clark Fork Tributaries (76 TMDLs: 13 sediment, 62 metals, 1 temperature), and the Tobacco TMDL (6 TMDLs: all sediment) are both approaching the public review stage. Watersheds with significant TMDL work initiated since February, 2009 include Missouri Cascade – Belt (38 TMDLs: all metals), Rock (pre-TMDL assessment work for about 13 metals and nutrient listings), and the Middle Clark Fork and Drummond Tributaries (pre-TMDL assessment work for about 20 metals and nutrient listings).

Dean summarized a few recent program activities and noted that Montana has received positive acknowledgement from EPA Region 8 regarding their 2009 TMDL pace. The 123 TMDLs that DEQ completed in the recent Federal Fiscal Year was more than the minimum projection, helping Region 8 meet national goals. Dean noted that there are multiple ways to track TMDLs. The DEQ normally tracks TMDL completion using the calendar year, and EPA tends to track by the Federal Fiscal Year. This can result in different numbers, so when you see a TMDL completion count it is important to pay attention to the time period it reflects.

Grey Water Rules

Barb Kingery from DEQ's Subdivision section gave an update on the grey water rules progress from their presentation back in April. The 2007 legislature had passed a mandate that they develop grey water irrigation rules to be allowed for sub-surface water. It was clear that they needed to make the grey water rules mimic the existing sub-surface waste water rules, while still making them flexible enough for irrigation purposes.

They brought the rules to the BER in June and started the public comment process. Through the public comment process there were some changes made to the rules. They've changed some standards that closely mimic the waste water treatment rules. They had a 50 ft. step back between water wells and grey water and they had a small step back between other wells and grey water systems. They increased that setback to 100 ft below causable and other water bodies. At the April meeting they said the grey water had to be sub-surface but have since clarified sub-surface to mean 6 inches below the surface of the ground.

At the October BER meeting there was a concern brought up that they needed to address from the pH issues with grey water systems and how that might affect soil. The grey water rules did pass and are now legal in Montana. There is the DEQ-4 document that they had to open up to add the new grey water chapter in. The question Barb presented to the Council if we open DEQ-4 up should they be looking at how pH and the alkalinity of wastewater affects soil. It's a big issue probably more so for eastern Montana rather than western Montana.

Roger commented that it's a great idea to look at the pH and alkalinity of the wastewater and would probably help relative to CBM development and reuse of that water as far as irrigation and fisheries are concerned it would definitely have an impact. Barb said they've heard it and are thinking about it. Gray water regulations are complete, on the shelf and we will start to review projects as they come in.

and they will start review projects as they come in. The state will review the design for it and then the counties will permit grey water systems and it will work very similar to drain fields.

When they started with DEQ-4 they had a 15 person work group and they split DEQ-4 up into chapters and assigned it to groups of three and asked them to make improvements and corrections as needed. They have since finished this task. They had one initial task force meeting and did not have enough people show up to participate so they are setting up meetings in Polson, Helena and Billings in the first part of December.

They have also set up a blog for an electronic forum for discussion that has a link off their subdivision website for those that want to talk about it that way. During the course of this work group they have added about six new chapters including grey water, registering waste, water treatment residuals, waste irrigation and sub-surface drip systems. They are also adding some drawings to the DEQ-4 that were originally in the old WQB circulars.

Barb asked the Council after they get through these task force meetings how do they wanted presented to them since the document is 33 chapters long plus appendices and drawings. Terry suggested using a fact sheet to boil the document down to the important elements and key points. Barb said they have summaries of what they are changing in each chapter so that should work. She asked if they want to see one big package or old versus new chapters. Earl asked for old and the new as it would be better than the whole document. Kathleen agreed that it helps to know what the changes were and why. Barb said she would put something together for the next meeting if not the following meeting depending on input from the task force meetings.

Upcoming Triennial Review of Standards/DEQ-7

Rod McNeil from DEQ's Planning, Prevention and Assistance Division presented a [PowerPoint](#) on the Triennial Review of Montana Water Quality Standards, Proposed Updates to DEQ-7 and Corrections to ARM's. The goal is to begin a triennial review of Montana's water quality standards as well as all the proposed updates of the DEQ-7. There are a lot of proposed changes and DEQ-7 has been expanded in a lot of ways.

Rod went over the slides and information provided in his PowerPoint presentation. The triennial reviews purpose is to open all the standards up for review to any interested parties. The pesticides on slide five were detected in the monitoring program as managed by the Montana Department of Agriculture. DEQ is establishing interim numerical standards as authorized under 80-15-201 MCA. DEQ has sought the support of the regional EPA toxicologist in Region 8 in making determinations to classifications of the compounds and the selection of the appropriate cancer slope indices where appropriate. Terry asked what a cancer slope indices is. Rod said there is a risk index based on the exposure of the population to given compound at a range of concentrations. A risk assessment slope index is an indication of a likelihood of cancer causing agents inducing cancer at varying concentrations. It's plotted as a graph and that provides the slope. Terry asked if you would pick off of that slope what the risk of cancer is, like 1 person in 10,000 from this particular compound. Rod said no that the sloping is concentration related and is based on a given risk factor of 1 in a million. Each state sets different risk factors, and in Montana our risk factor is 1 in 100,000.

Rod said that the list of new compounds to be added from the national water quality criteria for priority pollutants were added to DEQ-7. Rod referred to the list of new compounds to be added from the national recommended water quality criteria for priority pollutants that are not on the priority

pollutants lists for 304a. Some of the new compounds are specific only to aquatic life or human health. There is a quite a number of proposed numerical changes to DEQ-7.

Rod went over footnote changes and EPA's new list of compounds and species of bacteria in the CIII list. The Final Federal Standards for New Compounds list shows recommended changes to existing numeric standards based on new RFD's or new toxicological data. There is an annual review by toxicologists called existing national standards and all of these compounds have been recognized by change, and that change will probably take place in the next year before DEQ-7 so we can add those changes after they become available.

Kathleen asked what was being done about pharmaceutical compounds and are those being addressed in our standards and how other states are dealing with them. Rod said that pharmaceuticals and personal care products (PPCP) is a major focus on the new EPA list. Of the 102 compounds on the list for review about half of these are PPCP compounds. There are currently no federal standards for these compounds. Kathleen asked for clarification on the 102 compounds that EPA included in their recent list if some of those are PPCPs. Rod said that yes 54 of the 102 compounds are PPCPs. Kathleen asked if that would find it's way into this triennial review for DEQ or the next one. Rod said that no it would not be considered in this triennial review because there are no federal standards established. They are under review but have not published the initial draft for public comment. Once a decision is made as to which compounds are important enough to move into the final stage and final draft version, they will then go to the national criteria and then would be incorporated into the DEQ-7 standards.

Bob provided some background information. DEQ relies on the EPA to develop standards from toxicology for these compounds. The footnote changes in are to bring Montana's numeric standards more in line with how EPA expresses the national recommended water quality criteria. DEQ-7 right now currently has the magnitudes but doesn't have the averaging period and exceedance frequency pieces. What DEQ is trying to do is be more consistent with EPA's 304a criteria which is the basis of our standards. EPA's criteria also includes averaging periods and exceedance frequency components.

Bob said concerning the pharmaceuticals we tried to get funding to do a cooperative project with the US Geological Survey and Fish, Wildlife and Parks to do survey work in the State of Montana on how prevalent pharmaceuticals are in our surface water. The project wasn't funded, but they are looking for opportunities to learn more about this. Terry asked for clarification about if he was talking about all of the compounds listed in this presentation or just in general to do an assessment of surface water for a broader spectrum. Bob said in the case of the project that went to the last legislature it was a cooperative effort and it was to sample downstream of wastewater treatment plants and in effect look at potential worst case scenarios and see how much of these things are actually showing up in water.

Rod said USGS has been carrying out some of these surveys nationally and has hit 17 target compounds of that list of 102 that they are doing in the survey. They have already picked their target compounds of PPCP that they were using for this monitoring program. Terry asked for clarification that they had just picked a select group in order to minimize the parameters that they need to look at. Rod said out of the 17 compounds they looked for they found 15 of them in all locations at which point that kicks it up to another level where they look at a larger range of compounds. If on the other hand the surface surveyed for 17 and they found only two in a limited number of locations. In areas like Delaware and New Jersey they found everything everywhere so they kept kicking it up in levels and eventually ended up testing for 102 compounds in as many location as they had money for. But in the west they've seen lower hit indices and so they haven't kicked it up in the hierarchy to do more than one test.

Kathleen asked if the proposal to the legislature was just to sample surface water and there has been some work on ground water of these compounds in the Helena valley then DEQ isn't asserting it is only surface water. Bob said that we basically don't have much of a grasp on how much of an issue it is in Montana. Kathleen asked about footnote 3 and why the crossed out text refers to both surface water and groundwater sample concentration, but the added text only refers to surface water. Rod said footnote three related to acute aquatic life standards which applies to surface water only. Kathleen asked if that also applies to footnote 4. Rod said yes.

Pesticide Related Projects

Amy Bamber from the Department of Agriculture's Ground Water Protection Program went through her [PowerPoint presentation](#). Department of Agriculture has 44 wells across the state and they are mostly focused on shallow groundwater along the river systems. During special investigative projects they go into one area of concern that might not have very much information known that might have vulnerabilities and collect about 30 samples total. They try to include fresh water samples to get a better idea of what's there and try to include urban and suburban areas along with the traditional agriculture settings. Amy went over some insecticide test results from the Flathead Lake and Missoula areas. Earl asked when you find these things is the next step of her program to try and identify where it's coming from. Amy said that they do that in their program, but they do not technically do the remediation. If they find it to be a point source issue then they work with DEQ's remediation program. If they hit a level that is 50% or higher of the human health standard they are required to take action. They don't have anything in statute that requires them to do something in an aquatic health perspective, but they do evaluate their results against what is called the aquatic life benchmark and work with US EPA to develop those. Earl asked about MCL for nitrates in the Judith Basin. Amy said that when it comes to nitrates it's a much trickier situation because they have so many potential impacts and sources. They sample for septic, manure, fertilizer or soil nitrates.

Fee Rules

Jenny Chambers from DEQ's Permitting and Compliance Division's Water Protection Bureau gave an update on MPDES fee rules. The Board initiated rule making on July 24 and had a public hearing on September 23 and the public comment ran through September 10th. They received a significant amount of comments and they are currently now responding to comments and shifting some of the numbers around. Most of the comments they received were for storm water permitting mainly for construction and the comments were that the fee rules were too high and they were asking for too much due to the economy. They are bringing some of the fees down so they can get what they need to maintain the program through 2012. In addition, we may need to go back to the Board next year to ask for another small fee increase but that will depend on the outcome and budget projections.

The plan is to take the fee rules to the December 11th BER meeting and ask them to adopt the rule package. If the Board states they are not going to approve it or the vote doesn't pass, they will need to look having expense cuts probably in 2011. They will utilize the whole fund balance as they will have no more money in reserve and will not have enough revenue coming in for expenditures and that will mean a reduction in expenses. Right now they are operating on a very slim operating budget so a reduction would mean personnel services (staff). They are still drafting responses to comments for the legal staff and this needs to be done prior to going to the Board.

Terry asked if there is something that the Council could do in support prior to Jenny going before the Board such as a resolution of support. Jenny said that the Council could let the Board know its recommendation and she can reiterate that the Council gave direction to move forward with the larger

increase. She is not sure if it's within WPCAC's authority or arena to come and testify or if the Board even asks for comments after rule making. Bob said it would be appropriate for the Council to pass something to bring forward. Jenny said if WPCAC wanted to submit something in support of the Water Protection Bureau allowing them to have enough fees to at least manage the bureau status quo she could certainly hand that out as part of her testimony for the Board. Jenny said that it's kind of hard for the Council to do that now because they haven't seen the response to comments and how they've had to make some changes. She suggested perhaps organizing a conference call or sending out an e-mail with the information and changes. Bob said if the Council was to reassemble then he could do that as a formal public meeting.

Terry had a suggestion that due to the time constraints for the Council to have another meeting prior to the BER meeting was for them to consider a resolution that they could bring where the Council is in general support of the fee increases recognizing the inherent need to maintain the system at the minimum status quo. Jenny said that the Council approved the original package when she was given support to initiate rule making. The package is going to look the same only some of the numbers as far as dollar amounts may go down by \$100.

Dude said this is not on the agenda as an action item however if Terry wanted to offer a motion he believes it would be appropriate. Terry said there is nothing that says that the Council can't take an action on a previous briefing item if the Council thinks it warrants it. The conditions have been altered by feed back and comment, but it's still within the Council's right to have a secondary endorsement. Terry isn't so much worried about the actual dollar amounts specified in the fee rules itself but as trying to make sure that the Board knows that WPCAC is sensitive to the needs of the Bureau and the funding critical to them to be able to maintain the program. It's in everybody's interest to maintain the health of the protection and if we backslide then in the long run it causes problems for all the programs. He would like to have a resolution of support and it could be a general statement, but it would reinforce the fact that we recommended that they move forward with the fee rules. Kathleen asked Terry to rephrase his thoughts into a motion form so that they can proceed. Terry made the motion that the Council submit a letter or something in writing to the Board that would demonstrate that the Council is still in support of the fee rules be intact in order to maintain the financial health of the Water Protection Bureau at status quo in order to maintain all of the programs so that we do not backslide and take longer to catch back up later after everything suffers. Earl seconded the motion. A voice vote was taken and everyone but Scott gave approved. Scott abstained from the vote as he did not know enough about this. Kathleen asked to clarify that the motion was to submit something in writing or was there something else envisioned. Terry said that Bob could draft a memo indicating that the Council revisited the issue after Jenny brought forth additional information and that the Council is still in support of the approval of the fee rules even in the amended form. Earl asked to see the memo once it was drafted in case of some additional input. Bob said he would work with Jenny.

Court Ruling on EPA's Approval of EC and SAR Standards

Bob gave an update on the federal court action concerning EAC and SAR standards. In 2002 the Board initiated an action to adopt water quality standards for salinity in the form of electrical conductivity (EC) and sodium adsorption ratio (SAR) to use in regulating coal bed methane development discharges and the Board adopted those standards in 2003. EPA approved those standards and there was a series of different actions but basically shortly before the modifications to the standards being approved in 2006 the industry in Wyoming filed a couple of different lawsuits, including challenging the basis of the standards in State court, and challenging EPA's approval of the standards including the 2006

modifications to the anti-degradation piece of the standards. The State lawsuit has run its full course up to the Supreme Court and we prevailed on all accounts.

The Federal lawsuits were filed in Wyoming District Court in Cheyenne in April of 2006, in November of 2007 the judge stayed the proceedings and encouraged the states to try and work something out. The states did not work something out and in July they were back in court. There was a hearing in Cheyenne where both sides pled their cases and on October 13th Judge Brimmer released his ruling and basically remanded the standards back to EPA on both the 2003 and 2006 approvals. The basis for his remand was he found that EPA didn't consider the entire administrative record in making their decisions and he felt that EPA didn't do a good job of articulating their rationale. He said that EPA needs to determine whether the 2003 standards are based on appropriate technical and scientific data. Basically the Judge did not rule on substantive issues because he said EPA did not do a good enough job of explaining their basic rationale for why they approved the standards. What this means is that Montana's EC and SAR standards for the Powder River basin are not effective under the Clean Water Act at this point, but the standards are still effective under state law in the Montana Water Quality Act. So it's still business as usual for TMDLs and permitting sections because they are effective under state law. The Fed's have until mid-December to decide whether to appeal or not.

Public Comments

Dude asked for public comments. No public comments were given.

Agenda Items for Next Meeting

Bob said he thinks we will have a proposed 2010 meeting calendar, Council final decision on Chair, an action item for rule making for DEQ-7 and Triennial Review, and an update on MPDES fee rules. Jenny said possibly a briefing on an action item on DEQ-4 circular, an item related to their permit writer's guidance manual.

Meeting Adjourned at 1:40 p.m.