

Water Quality Standards (WQS) Workgroup Meeting Summary Draft
September 12, 2007, 1:00 – 4:45 p.m.
168 North 1950 West, Salt Lake City, Dept. of Environmental Quality, Room 201

Attendance

WQS Workgroup Members and Alternates in Attendance

Ying-Ying Macauley, Division of Water Quality
Dave Wham, Division of Water Quality
Dave Moon, EPA Region 8
Nathan Darnall, U.S. Fish & Wildlife Service
Carmen Bailey, Division of Wildlife Resources
Roy Gunnell, Department of Agriculture and Food
Leland Myers, Central Davis Sewer District
Florence Reynolds, Salt Lake City Public Utilities
Shazelle Terry, Jordan Valley Water Conservancy District
Lisa A. Kirschner, Parsons Behle & Latimer (representing Utah Mining Association)
Brad Rasmussen, Aqua Engineering (representing Utah Food Industries Association)
Bret Randall, Chapman and Cutler (representing Utah Manufacturing Association)
Merritt Frey, Utah Rivers Council
Paul Dremann, Trout Unlimited
Mark Peterson, Utah Farm Bureau Federation

Others Present

John Whitehead, Division of Water Quality
Tom Toole, Division of Water Quality
Carl Adams, Division of Water Quality
John Kennington, Division of Water Quality
Kerry Ruebelmann, Kleinfelder Consultants
Mark Quilter, Department of Agriculture and Food
Don Summit, JBS Swift Beef
Douglas Stipes, JBS Swift Beef
Jeff Salt, Great Salt Lake Keepers

Introduction of the meeting participants were made and a role was taken. In the absence of Bill Moellmer, Ying-Ying conducted the meeting, and Dave Wham of DWQ facilitated today's meeting.

Discussion Boundary and Priorities

Ying-Ying Macauley began the meeting discussion by clarifying the boundaries of the Water Quality Standards (WQS) discussion. The discussion will not be limited to the changes proposed by the Division in the last Water Quality Standards rulemaking action. Other issues may have higher priority.

Ying-Ying then stated that the focus points and priorities of the discussion, from DWQ's perspective, are:

- Anti-degradation rules – ADR is an issue with permit issuance.
- TDS standard – should it be 1,200 mg/l or include the 2,000 mg/l?

- Reclassification of recreation designations from 2B to 2A (including the E. coli maximum not to be exceeded).

The Role of WQS Workgroup

With regard to DWQ expectations for the WQS Workgroup, Ying-Ying clarified the meaning of the word “straw man” used in her previous communication as the conceptual proposals from the members of the Workgroup, not the exact rule-making language itself. The word “recommendation” would be more correct than “straw man.” It is not the Division of Water Quality’s (DWQ) intent that the Workgroup craft the actual rule language. The DWQ is seeking feedback and recommendations from the WQS Workgroup and other stakeholders through these WQS meetings prior to initiating the rule-making process. Written feedback and recommendations are welcome. The DWQ staff will craft the WQS triennial review rule-making language and present to the Water Quality Board (WQB) for their consideration.

Ying-Ying clarified that the meeting summary is meant to provide a summary to the stakeholders who are not able to attend the meeting, and the meeting summary will not be verbatim and may not contain the details.

Consensus

YingYing introduced the topic of consensus-based decision making to the group. A good deal of discussion ensued as to whether or not the WQS Workgroup should use this approach. The underlying theme of the comments was that consensus should not be represented unless there is actual consensus. If concensus was represented there needed to be clear rules on how it was reached. The key idea was that consensus is probably not needed, because while DWQ may use input from the Workgroup, they ultimately have the responsibility to prepare legally appropriate rule recommendations to the Water Quality Board.

Merritt Frey believed that no consensus is needed since the group is meeting to “air” the issues important to each group member.

Dave Moon mentioned that WQS Workgroup’s discussions on standard issues allows input prior to rule making, for example, Colorado holds a series of meetings prior to rulemaking to reduce possible conflict when rules are made. Great Salt Lake Steering Committee is more formal in providing input than the WQS Workgroup.

Lisa Kirschner said that if consensus is represented to the WQB then the group needs to clearly define how consensus is reached.

Bret Randall clarified that the need for consensus depends on how recommendations from this committee will be presented to the WQB.

Ying-Ying presented the Consensus-based Decision Making process used by the Great Salt Lake Steering Committee GSLSC (Handout #2). The following is the summary of the GSLSC decision making discussion in November of 2004:

There needs to be a supermajority (3/4) for approving substantive matters. If not, all opinions will be advanced to the WQB. If there is a supermajority only the majority opinion will be forwarded. Elements of fairness need to be maintained

and all issues will be open to discussion. In order to move a position forward a supermajority of those attending the meeting is needed for substantive issues and 2/3 for procedural issues. In order to conduct meetings in an orderly matter, members need to raise their hands and wait until invited to speak.

Ying-Ying stated that this Workgroup does not have the same role that the GSLSC does, so it does not have to use the same procedure as that group.

Merritt reiterated that this committee is just a “sounding board” and so no consensus is needed. Lisa proposed that consensus can be noted in meeting minutes, but it is not useful for substance.

Jeff Salt stated that comments in this meeting are very similar to public comment to the Triennial Review so any formal meeting procedures for reaching consensus can be relaxed.

Leland suggested that the Workgroup goes through the anti-degradation discussion and see if the Workgroup can reach a consensus.

Dave Moon proposed that the DWQ staff write a summary of comments and issues along with the range of opinions expressed on issues at the end of this meeting process, and present the proposed rule language with the comment summary to Water Quality Board.

Ying-Ying stated that the Division will make final decision of how the groups input will be forwarded to the Board, and that the Division and the Workgroup members should try to document the opinions if deemed important.

Ground Rules

Ying-Ying solicited comments from the Workgroup members on ground rules for the meeting discussion. The ground rules suggested by the members include:

- Turn cell phones to vibrate.
- Be respectful when discussing issues.
- There should be no side discussions.
- Common courtesy such as being recognized by the chair before commenting.

Nathan Darnall suggested a schedule for future meetings that would allocate a specific time to each topic.

EPA’s Perspective in Antidegradation Review (ADR) Policy

Dave Moon gave a Power Point presentation entitled “*Antidegradation: Federal Requirements and Possible Updates to Utah’s Rule.*” This presentation (Handout #5) will be posted on the DWQ WQS website. Dave first presented the three tiers of federal ADR:

- Tier 1 was developed in 1975 and is applied to all waters.
- Tier 2 waters are those that are better than the minimum fishable/swimmable standards
- Tier 3 waters are outstanding natural resources.

Dave stated that current ramps are a mismatch and they should be reorganized by combining.

The Workgroup made the following comments during the presentation:

- Slide 2 – The EPA terms “Tier 1, 2 and 3” do not correspond to Utah’s terms “Level 1 and 2” anti-degradation review. The EPA term “tier” refers to levels of protection to different quality waters. The Utah term “level” refers to the amount of review done to ensure protection.
- Slide 4 – Utah mostly identifies high quality waters using the “waterbody-by-waterbody” method. The term “assimilative capacity” refers to the increment between an existing water quality parameter and the standard.
- Slide 7 – Off Ramp #2 (R317-2-3.4.b.2) could be combined with 4, 8 and 9. The rationale for combining these offramps is that a water quality standard is already exceeded or the assimilative capacity is already allocated. The 303 (d) list and the TMDL process already deal with these situations. Combining 2 and 4 with 8 and 9 could make them “parameter based.”
- Slide 8 – It is noted that, in going through Utah’s anti-degradation process, 3C and 3D waters are automatically dropped from review; and that off ramp criteria should be developed for these two classes. Decisions about what waters have high quality should be based on data and not just on a state’s designation of beneficial use. State designations are not necessarily based on data. The question was asked whether the state should keep Off Ramp #6 (R317-2-3.4.b.6) and upgrade the classification of 3C waters to 3A or 3B. Carmen Bailey recommended keeping Off Ramp #7, since some 3C waters have sensitive or endangered species. She said that the DWQ designations probably do not correspond with the DNR designations. Don Summit recommended that rules based on data state clearly the standard in terms of geometric means, arithmetic means, maxima, minima, median values, etc. Ying-Ying suggested DWQ GIS staff work with Carmen and DWR GIS staff to find out how the water bodies in Off Ramps #6 and #7 correlate. Carmen will report back to the WQS Workgroup in the next meeting on their findings.
- Slide 9 – It was suggested that the review process be clarified and that a standard level II review worksheet or form be developed. A checklist could be developed, but it was stated that some data must be submitted for review
- Slide 10 – Colorado also has a procedure to adjust their baseline if water quality improves due to remediation or other actions. Colorado’s review is based on the baseline date that has been established for a water body. This baseline date is established by the first proposal arrived after the regulation became effective. They try to find as much data as possible to establish the baseline. Colorado also requires the stakeholder to collect data.
- Slide 11 – Florence Reynolds asked whether pollutants for which there is no standard, such as endocrine disrupters, should be considered. Brad Rasmussen asked if drought year flows are considered when calculating changes to a baseline. Lisa asked when a baseline is determined.
- Slide 11 – The Workgroup made many comments to and discussed in details about Dave’s proposed revision to Off Ramp #10. Dave discussed the definition of significance and the potential value of a cumulative cap on the use of assimilative capacity as explained in his presentation slides (Handout #6). Dave stated the need of looking at increase in concentration rather than or in addition to loading. It was stated that Off Ramp #10 as defined allows rolling creep in background. Ying-Ying demonstrated Bill Moellmer’s examples of various ways to interpret “background” stated in the current rule language of Off Ramp #10 (Handout #8). The definition of background was identified as critical issue.

- Slide 11 – The concept of “de minimis” pollution in an antidegradation policy was discussed. Merritt asked whether DWQ could look at the permit applications and determine how many facilities would be pushed into Level II reviews and how many will turn out to be “de minimis.” Lisa asked whether the Division have the staff and resources to handle the increase in reviews. Leland Myers and Merritt liked the concept of the 3-tier approach proposed in Dave’s slide #11. Mark Petersen asked if Dave’s recommendation would push all permits to level II review. Don Summit recommended that new offramps based on data have clear guidance on the how measurements will be used (means, medians, etc.). The Workgroup discussed what the new facilities would be required to go through the ADR review according to Dave’s proposed 3-tier language of Off Ramp #10. For example, the first tier could be used for existing facilities but not for new facilities, and the second and third tiers for new facilities.
- It was asked what “temporary” means in the rules. A discussion of excursion and violations should be made and they should be defined.

Ying-Ying summarized the Workgroup’s comments to Dave’s proposal:

- DWQ staff should proceed with crafting language to combine Off Ramps #2, #4, #8 and #9.
- The Workgroup needs more information in the next meeting in order to continue discussing Off Ramps #6 and #7.
- The Workgroup needs to discuss Off Ramp #10 and the revision proposed by Dave in the next meeting.

Ying-Ying suggested that the next meeting focus on offramps 6 and 7, offramp 10 and TDS.

Future Meetings

The group discussed the meeting schedule, the places for future meetings and a schedule for breaks. Ying-Ying suggested that, in the next meeting, DWQ will propose a time frame of specific discussion topics in future meeting dates for completing the work of the Workgroup.

Ying-Ying outlined the future meeting dates and locations:

10/17/2007 W, 1-5 p.m. (CHB Room 125, 288 N 1460 W)
 11/14/2007 W, 1-5 p.m. (DEQ Room 201, 168 N 1950 W)
 12/12/2007 W, 1-5 p.m. (DEQ Room 201, 168 N 1950 W)
 1/16/2008 W, 1-5 p.m. (CHB Room 125, 288 N 1460 W)

Ying-Ying reminded the audience that the meeting locations may vary (either in Cannon Health Building or in Dept. of Environmental Quality Building). The next meeting will be 1 to 5 p.m. on October 17, 2007 in Cannon Health Building Room 125. The two main topics for the next meeting are:

- Continuation of antidegradation discussion
- Total dissolved solids (TDS)