

Stephen L. Beshear  
Governor

Leonard K. Peters  
Secretary



**Environmental Quality Commission**  
500 Mero Street, Capital Plaza Tower, 12<sup>th</sup> Floor  
Frankfort, Kentucky 40601  
Phone (502) 564-2674 Fax (502) 564-2676  
E-mail: EQC@ky.gov  
www.eqc.ky.gov www.kentucky.gov

Scott Smith, Chair, *Lexington*  
Jason DeLambre, Co-Chair, *Lexington*  
Dr. Kimberly Holmes, *Lexington*  
Tom Herman, *Louisville*  
Laura Knoth, *Grand Rivers*  
Martha Tarrant, *Lexington*  
Mark Grisham, *Paducah*

Aug. 30, 2012

Quarterly Public Forum

Host site

Kentucky State University  
Academic Services Building

Video Sites available were:

University of Louisville

University of Pikeville

Murray State University

Morehead State University

EQC Commissioners Present:

Scott Smith

Jason DeLambre

Martha Tarrant

Dr. Kimberly Holmes

Mark Grisham

Tom Herman

Staff present:

Arnita Gadson, Executive Director

Janet Pinkston, Executive Assistant

Meeting called to order at 6:10 p.m. by Chairman Scott Smith. He distributed two Total Maximum Daily Load reports, one on Upper Cumberland and one on Laurel River out for public notice, giving opportunity for review, questioning the ability to understand the document.

Minutes of EQC Annual Meeting June 28-29, 2012 were reviewed. A motion was made by Grisham and seconded by Herman to accept the minutes with no corrections. Passed by a unanimous vote.

Dr. Kimberly Holmes of Kentucky State University introduced two guests: Dr. Teferi Tsegaye, Dean of the College of Agriculture, Kentucky State University and Dr. Maipan Silitonga, Aide to the Dean and professor of environmental science at KSU. The school will be doing more environmental stewardship.

Tsegaye is a water quality expert and offered assistance to the commission on technical matters. "We are ready to be challenged." Maipan stated KSU has 17 graduate students in environmental studies. This fall, KSU is pursuing status as a Groundwater Guardian Community, designated by the United States Geological Survey's National Groundwater Foundation to protect water as a resource. KSU will be the first in Kentucky to earn such designation.

**Public comment:**

Teena Halbig of Floyd's Fork Environmental Association, founded in 1991. Their mission is to protect and preserve the Floyd's Fork watershed.

**Discussion:**

Pill Bill Review revisited – there is need for a safe drop off site/ it is ending up in the drinking water.

Floyd's Fork Total Maximum Daily Load.

Discussion included the following:

- Floyd's Fork TMDL – Tetra Tech, vendor for EPA is developing a water quality model addressing nutrients and bacteria.
- Impacts on warm water habitat
- Contents in the KWRRRI communication by Lindell Ormsbee.
- EPA requirements on the need of a TMDL report on impaired water bodies to meet state standards.
- Sewer plants at Floyd's Fork - KPDES permitted and gravely inadequate, handling volume greatly in excess of their design.
- Loss of stream quality, unhealthy for human or aquatic use.
- EPA and Kentucky Division of Water pursuing water pollution trading, best management practices and green infrastructure to grant additional new flows.
- KPDES permits - revised to further limit discharges of phosphorus, nitrogen, etc.
- Tim Wool - EPA Region 4 contact for water quality standards.
- Public meeting, Sept. 6 at the USGS in Louisville.
- Division of Water to convene Technical Advisory Committee (TAC) and public meetings to discuss progress on TMDL.
- Floyd's Fork Environmental Association requested to be a stakeholder.
- List of 28 members of TAC. Citizens not allowed to speak.
- State government will become the oversight agency.
- DOW to introduce water pollution trading in Kentucky. This follows the Ohio River Basin Pilot Project in northern KY. KWRRRI is tasked with contacting 114 organizations and an unknown number of residents and landowners.
- Farmers state that the Floyd's Fork TMDL is based on incorrect data. This is the first TMDL in the state for nutrients. It provides an important foundation.

**Recommendation:** Farmers and others must be included in discussion of nutrients and bacteria in the watershed.

**Reasoning:** The public will be targeted for nonpoint source pollution. The pathogens/bacteria TMDL will target homeowners with septic systems, and storm water runoff fees.

County health departments question the data. These are nonpoint sources that are load allocations (LA) that can become subject to mandatory pumping and possible fees. The point sources are waste load allocations (WLA) that are enforceable. Runoff from properties could become subject to fees.

Is this an attempt to divert focus from sewer plants to farmers and impose additional fees?

**Recommendation:** The public must have adequate representation in the discussion of nutrients and bacteria in the watershed.

**Reasoning:** Public and public officials are unaware that EPA is strengthening local water quality standards. The Floyds Fork TMDL process will identify sources of pollution in Floyds Fork. Will the increased sewer rates double or triple for the relevant 60+ cities with MS4 plans that line the banks of the five-county watershed be communicated.

Under current paradigm, residents of Louisville, Hillview, Shepherdsville, LaGrange and Oldham, Henry, Shelby, Jefferson, Bullitt etc. have little chance to participate in a discussion that will have a tremendous financial impact on them. More costs can come from regionalization House Bill 26 passed a year ago. This provides a cap of 5 percent annually, in addition to existing sewer increases, and potentially subject to capital infrastructure and operating fees while not under the PSC.

**Recommendation:** State government must embark upon a public awareness campaign beyond what KWRRI is doing. At present, the public isn't aware that the federal government has declared most all of Floyd's Fork impaired and that its waters too dirty for fishing, swimming and wading.

**Reasoning:** KWRRI methodology of stakeholder engagement is top-down. A concern, is meetings are not being held publicly. Participants must sign a confidentiality agreement as a prerequisite for participation. Want to know the originator of this procedure. Taxpayer money is used to finance such a structure.

This does not provide transparency. It appears to be against the public interest.

**Recommendation:** Division of Water should mandate that KWRRI hold all its meetings regarding the Floyd's Fork watershed in public per open meetings and open records laws in the Commonwealth of Kentucky, also Division of Water must have balance and inclusiveness in TAC stakeholders to represent a balance of diverse interests.

**Reasoning:** Division of Water is leaning heavily on KWRRI to engage the public on the matter of Floyd Fork's future, preferring to gather data by interviewing constituencies of its own choosing, and in private per the instructions of the University of Kentucky.

We question the decision of the Division of Water to turn over its responsibility/authority to engage public and private entities to KWRRI. The public is denied participation in debate due to controlled methodologies, and deadlines that have not been made public.

Floyd's Fork Environmental Association objects to DOW using its agency funds from permits to pay KWRRI for investigative questioning of potential TMDL stakeholders. DOW agency funds are public monies even if collected from a private company since permit fees/violations belong to state government.

FFEA objects to both KWRRI and Division of Water's lead on public engagement if not staffed or equipped to do so in a manner that meets open meetings and open records laws.

**Recommendation:** A "simplified version" of all TMDLs for public consumption and understanding for the average citizen. DOW should make this a requirement in its contract language. Also, that the public have some time to comment at each public meeting.

**Reasoning:** TMDLs produced by the Division of Water are too technical in nature for the general public to understand i.e., the TMDL on South Elkhorn.

KDOW's hiring of a facilitator for the TMDL process is an unnecessary expense and shows the need for training KDOW personnel. See ground rules.

**Recommendation:** More accountability of public funds by DOW on public meetings

**Reasoning:** DOW introduced the term "water pollution trading" at the first TAC. When discussion became prolonged, DOW and EPA tabled the discussion. It is the opinion of Floyd's Fork that DOW notes, not minutes, did not accurately portray comments.

DOW will write water pollution trading into the TMDL. Such trading agreements will be between and involve private businesses, not publicly discussed.

**Recommendation:** That Division of Water adhere to open meetings and open records and that minutes be taken, not notes and labeled as DRAFT minutes until approved at a meeting with TAC stakeholders present.

**Recommendation:** DOW must list criteria for how and when changes would be considered and give newspaper and electronic notices to those who requested notification, including TAC stakeholders.

**Recommendation:** Tetra Tech, consultant for EPA/DOW, should contact the Kentucky Geological Survey for their maps. A KGS representative was there but his comments on karsts were not included in the notes.

**Reasoning:** During an on-site trip Aug. 28, enormous sinkholes, the size of a dump truck next to a 300-acre farm that the 690-acre Bullitt County Stone Company wants to mine, were observed.

This data should be incorporated on karsts to calculate underground water.

**Recommendation:** DOW should contact Kentucky Geologic Survey for input regarding karst as well as any formula to calculate groundwater, to use in the models.

**Reasoning:** Data has been reviewed for a year, with EPA and state going through this process. It is important for this to be correct at the beginning in order to reap a TMDL that is appropriate.

In two Metro Council districts of watershed, the latest census showed an increase of 40,000 people or businesses. There is need for more up-to-date, accurate information.

EQC Chairman personally submitting 35 pages of comments, with no responses, and another 40 pages as of the date of this meeting. Collaboration is needed.

***Please see enclosures referencing above information.***

**Attorney Bud Hixson of Louisville**

Previously represented FFEA in a lawsuit over open records and meetings issues in a prior watershed planning effort in Floyd's Fork.

**Speaking on his own behalf.**

Hixson: The bottom line for all who live and work here is, our streams are valuable to us. The whole point of the Clean Water Act is to save beneficial recreational and wildlife resources for future generations. We are in an era where impacts, pressure, industrial development and human encroachment have reached crisis proportions on our natural resources.

When looking at modeling a watershed and pollution loading in 2012, it's against the backdrop of the global climate change crisis causing extreme rain events that were previously 100-year events. Now more frequent, causing more extreme wash off and pollutants into stream, we're really in a pivotal position.

For EQC to discuss TMDLs, Clean Water Act and watersheds and protecting them, supports an important conversation. To further conversation toward better protection, speak with a loud and courageous voice to political forces not focused on that. EQC is poised in between political clout and friends of citizens. I urge better protection, for sometimes the sponge for public comment gets absorbed and disappears.

We must recognize the time has come, if we're going to keep things we like about Kentucky streams, we better start doing it with more rigor, and put in more stringent controls, or it's going to be gone.

I regularly go to Floyd's Fork stream to canoe and hike. I go to the park around Floyd's Fork wastewater treatment plant. I can stand on the new bridge and see an effluent channel from the wastewater treatment plant as it discharges into Floyd's Fork. It's now admitted and understood that we have reached the loading capacity of this stream with pollution. We've reached it and exceeded it.

It's a small cup overflowing with pollutants, so the Clean Water Act has been triggered and we have to do a Total Maximum Daily Load, and go back and put additional limits on KPDES point source discharges. Further limits, best management practices, load allocations of nonpoint sources, may be necessary to achieve proper uses of the stream.

**I think we're fighting a losing battle. We are really talking about uncontrollable growth issues; we need** more discussion in Kentucky among policymakers on the pressures of growth on economic expansion in any meaningful way that will result in a workable control situation. That will be where policymakers learn to enunciate clearly what we need to do, because we're in a crisis situation.

So in that context we've started talking pollution trading in the watershed. In modeling, Tetra Tech produces a large volume of highly technical data. It must relate to the real-world impact so people understand what's happening.

Diverse fauna, for example - One use is warm water aquatic habitat, with shellfish. Floyd's Fork is renowned for fish and shellfish, some rare species. We want to preserve it. The nutrient loading model, should inform people. Looking at phosphorous and nitrogen or sediment, is important due to these species, their declining numbers, and the impact.

In summer months, too much nutrients, proliferation of algae and then dissolved oxygen sags kills fish, those things impact hydrology modeling. Tetra Tech's giant model broke down watershed into 118 identified legs and some catchments; it didn't identify Floyd's Fork sewer plant, or Oldham County sewer plant, on these catchments.

The Floyd's Fork plant should not be used as a conveyance for pollution. It destroys water quality all the way downstream.

Need geo-location of water pollution trading; source of pollution. Sewer plants loading stream in both wet and dry weather. Source of nutrients. This was not the intent of Clean Water Act. It was to minimize pollutants, and if not working, to limit them more.

In Louisville, the Louisville water company provides water to Floyd's Fork. About the watershed model, it should be done correctly. We are looking only at phosphorous and nitrogen at this time. We need to add copper, zinc, fluoride and nonpoint sources.

No reason Kentucky should be last in the pack to understand modern impact on streams. We know de-icing from highway runoff and from parking lots and insecticides are killing our aquatic community. Kentucky could be a leader in this, those impacts should be included. Encourage Tetra Tech to keep working on TMDL and make it better. I don't think we should do an end run around the Clean Water Act with permit trading. That doesn't help wildlife or quality of our streams.

#### **Commission discussion on TMDL issues**

There needs to be more discussion. Sept. 6 will be the second-to-last meeting with TAC with EPA present. If all are in agreement, a phone dialogue between EPA and DOW to discuss questions could be established. The process is of concern.

The process involved in TMDLs must be the primary focus because of the importance to citizens around the streams. What we presently have is not working. We started this discussion at the annual meeting with DOW. It is not realistic to expect the public to understand these documents within 30 days. Public backlash and attitude is shared in the industrial community. There is a broad swath of concern about information being accurate.

If not careful, there will be a massive overrun on sewer cost as a result of these requirements. EQC can facilitate an open dialogue between the public and state. We can discuss collectively with DOW and EPA.

Several issues come into play:

- DOW recognizes the process itself is a "work in progress", and acknowledges there is room for improvement.
- Suggest Teena's recommendations go to DOW, and start with areas of consensus.
- Prioritize list.
- Recognize poor communication and misunderstanding areas
- Attempt postponement of Sept. 6 meeting
- EQC providing a facilitation role
- EPA relinquishing to State oversight
- Process and solutions to solve pollution problems
- Acknowledge driver of the process
- How the input is developed for the model is of utmost importance, i.e., are they including sinkholes
- Need to engage DOW and help with dialogue with the community
- Trading
- Executive Summaries and community friendly reports
- A possible January meeting

- Better communication, with respect for all involved.
- Possible DOW presentation at October meeting, EPA to follow

When there has been an alternative to a TMDL, other communities have referenced it. There are effective watershed groups in Atlanta, Tennessee and Georgia, and across Region 4, where communities came together and solved problems themselves without some of the process of the TMDL.

Example of past failure:

- Floyd's Fork attempted unsuccessfully to solve issues - a package plant up for renewal with an unlined lagoon
- Requested a hearing, data was never received.
- Permit writer quit and was never replaced.
- Louisville regional office deferred to Frankfort.

When a line comes within 500 feet of a plant, the state comes offline.

Holmes: I agree with all stated by commissioners and am prepared to move.

Submit a letter to DOW with recommendations stated by Teena Halbig and with observations from commissioners that articulates our impressions that the document is too complicated for general public. Motion was seconded by DeLambre. Passed unanimously.

There is a concern that some of the Floyds fork data is not factual. Not sure DOW has a clear process on how that is supposed to work.

#### **Report from EQC commissioners**

Grisham and Tarrant met with Commissioner Bruce Scott and Deputy Commissioner Aaron Keatley of Department of Environmental Protection today. The discussion included various issues regarding challenges and ways to work together.

Requested to have the 900-page document with 30-day comment period extended to 60 days. Requested a letter to be forwarded to Sandy Gruzesky to request the extension.

Errors noted:

Obscured mapping – stream location unclear.

Listing process of impaired streams is critical.

Smith asked for motion for 60 day extension on document

Holmes made the motion, DeLambre second. Passed unanimously.

Gadson: Every five years LRC does an audit, I completed and forwarded their survey on our mandate, meetings, minutes, etc. Everything must be in place.

Discussed Environmental Law section of the State of Kentucky's Environment publication. The Environmental Justice piece is new. We are still working under the National Executive Order. There are no laws or regulations in Kentucky regarding Environmental Justice. Information regarding Jefferson County's Air Regulation Problem will be inserted. Glossary of Acronyms to be included.

There may be need for a conference call for discussion on the booklet.

Motion to establish conference call to review this again after all corrections incorporated.

Holmes made motion, Tarrant seconded. Motion passed unanimously.

At 7:45 p.m. motion to adjourn from DeLambre, Grisham seconded.

**THESE ACTIONS, ALONG WITH THE AGENDA ITEMS, MAKE UP THE OFFICIAL MINUTES, WHICH ARE ON FILE IN THE OFFICE OF THE SECRETARY**

**Signed by:**

\_\_\_\_\_  
**Scott Smith, Chairman**

**Date:** \_\_\_\_\_