



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

JAN 25 2010

The Honorable Ben Ray Lujan
House of Representatives
Washington, D.C. 20515

Dear Congressman Lujan:

Thank you for your letter dated December 3, 2009, to U.S. Environmental Protection Agency (EPA) Administrator Lisa P. Jackson requesting assistance with the implementation of the Mora River Total Maximum Daily Load (TMDL) in New Mexico. Your letter was referred to me for reply because New Mexico is within the jurisdiction of the EPA Region 6.

You wrote that the Mora River TMDL adopted by the New Mexico Environment Department (NMED) and implemented in the Mora Mutual Domestic Water & Sewer Association's (MMDWSA) National Pollutant Discharge Elimination System (NPDES) permit will require costly upgrades to MMDWSA's waste treatment system. You asked if the TMDL could be implemented in an alternative manner.

The Mora River TMDL, which was developed by the NMED and approved by EPA, uses in-stream phosphorus and nitrogen targets of 0.03 milligrams per liter (mg/l) and 0.38 mg/l, respectively. The TMDL indicates that point sources, which include the MMDWSA, are the main source of nutrients into the river. The approved TMDL, which went through a public participation process, allocates 88 percent of the allowable nutrient load to the point sources, including the MMDWSA. The TMDL explicitly provides the MMDWSA with two implementation options: (1) provide treatment to nutrient levels required by the TMDL waste load allocation, or (2) replace the MMDSWA current facility with a cluster waste system, eliminating the need for a direct discharge into the Mora River. However, the TMDL does not exclude other implementation options to meet the waste load allocation.

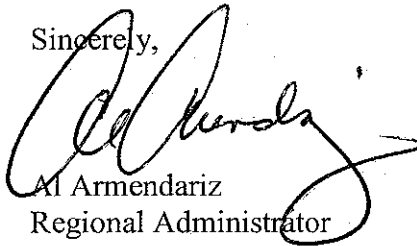
You specifically asked about using the trading approach included in the NPDES permit for the Town of Taos, New Mexico, as a possible alternative in this instance. The approach used in the Rio Hondo TMDL and implemented through the Taos NPDES permit establishes stringent nitrogen and phosphorus effluent limitations for the existing waste water treatment system. In addition, it allows for the shifting of nutrient loads from septic systems through a compliance schedule as loads from those systems are brought online for treatment through the wastewater treatment plant. Such an approach still requires compliance with stringent effluent limitations from the treatment facility. It also requires an available load allocation to transfer. As approved, the Mora River TMDL does not lend itself to such an approach because the nutrient load allocation given to the Mora treatment facility is already a very high percentage of the available nutrient load. There is no significant additional load available to transfer. Any meaningful additional waste load allocations for the MMDWSA can only be achieved through a revision of the Mora River TMDL.

You also expressed concern about the lack of measures in the TMDL to reduce non-point source pollution into the River. You stated that some of these sources, including more than 900 septic/cesspool systems, contribute more than 90 percent of the nutrient loading to the river. We encourage the MMDWSA to provide the NMED any technical information it may have that may not have been considered in the development of the original TMDL. States may revise a TMDL to account for new information or circumstances that may come to light during the implementation of the TMDL. If NMED revises the TMDL to include different waste load allocations or implementation approaches, the NPDES permit for MMDWSA could then be modified to reflect those revisions.

We recognize the difficulty the MMDWSA will have in meeting the wasteload allocations in the Mora River TMDL. We are available to meet with officials from the NMED, the MMDWSA, and your office to discuss possible resolutions.

I hope this information is helpful. If you have any further questions, please contact me at (214) 665-2200, or you staff may contact Ms. Cynthia Fanning of my staff at (214) 665-2142.

Sincerely,

A handwritten signature in black ink, appearing to read 'Al Armendariz', is written over the typed name and title.

Al Armendariz
Regional Administrator

cc: Mr. Ron Curry
Secretary, New Mexico Environment Department

February 04, 2010

Representative Ben Ray Luján
Member of Congress
3rd District, New Mexico
Washington Office
502 Cannon House Office Building
Washington, D.C. 20515

Dear Representative Luján:

The community of Mora, New Mexico lies in a scenic valley between Las Vegas and Taos on Highway 518 at an altitude of 7,180 feet. Our unincorporated community has been continuously occupied by Hispanic settlers since the late 1700s. Water has always been our most vital resource, and we have been blessed with numerous pure sources from the Sangre de Cristo Mountains.

However, modern settlement in the Valley has led to numerous environmental concerns impacting the Mora River. Over 900 septic systems and cesspools have impaired water quality by adding nutrients to the stream. Other land-use activities such as grazing and agriculture in the Valley have contributed to these nonpoint sources of pollution. Unfortunately, the only entity that will be held accountable for this entire nutrient loading to the river will be our wastewater treatment system.

As you are well aware, the New Mexico Environment Department has issued a revised National Pollutant Discharge Elimination System (NPDES) permit for our wastewater treatment system. This permit is extremely restrictive and is technologically and economically infeasible for our community. Apparently, our only possible solution is to cease discharging our treated effluent to the Mora River and upgrade our wastewater treatment system to produce higher quality effluent suitable for alternate methods of discharge.

Our Board of Directors and General Manager has diligently pursued every funding source that is available to our system. Our region project has received substantial monies from USDA Rural Development and the State of New Mexico. However, I think you will agree after you have examined our attached rate analysis that we have major challenges in completing our project and complying with the revised NPDES permit. What is our community to do if the project is simply unaffordable?

On behalf of the entire Board of Directors of the Mora Mutual Domestic Water Consumers and Mutual Sewage Works Association (MDWC&MSWA), thank you Representative Luján for your efforts on our behalf. We greatly appreciate your letter (December 3, 2009) to EPA administrator Jackson requesting clarification of the Total Maximum Daily Load (TMDL) program. Unfortunately it is apparent that our community must come to terms and comply with the regulatory burden that has been placed upon us by the federal government.

The only possible option at this time, aside from the State of New Mexico raising the nutrient limits on our permit, is to request an appropriation in the amount of \$6,731,644 for the MDWC&MSWA to repair our current collection system to eliminate excessive groundwater infiltration and to upgrade our wastewater treatment system in order to achieve compliance with the NPDES permit. I have attached documentation on the permitted nutrient limits, the history of the TMDL process, the vital health, sanitation and security needs that are met by this project, the project scope, and a breakdown on the total project cost estimate.

We are aware that funding is increasingly difficult to obtain given our country's current economic conditions. Our community has done its best to identify and leverage existing state and federal funding sources and to shoulder as much debt as possible. We simply have run out of options – in order to comply with our regulatory obligations, we are requesting your help again. Thank you so much for your consideration of this funding request. Please give me a call with any questions you may have. I can be reached at 575-387-2767.

Sincerely,

Elauterio Trujillo
President
Mora MDWC&MSWA

Mora MDWC&MSWA Funding Sources		
1	USDA Grant	\$ 1,376,940
2	USDA Loan	\$ 458,980
3	USDA Grant	\$ 400,000
4	NM Legislative Appropriation	\$ 10,000
5	NM Executive Appropriation	\$ 237,343
Funding Total		\$ 2,483,263
Drawdown		\$ 247,343
Remaining Funds		\$ 2,235,920

Residential Sewer Rate Analysis					
Current Residential Sewer Rates			\$ 18.90		
Loan %	100 %	75%	50%	25%	10%
Phase 1	\$ 35.23	-	-	-	-
Phase 2	\$ 86.46	\$ 73.66	\$ 60.85	\$ 48.04	\$ 40.35
Phase 3	\$ 161.14	\$ 129.67	\$ 98.19	\$ 66.71	\$ 47.82
+ O&M Costs	\$ 178.45	\$ 146.98	\$ 115.50	\$ 84.02	\$ 65.13
% Rate Increase	844%	678%	511%	345%	245%
Annual % of MHI	8.7%	7.2%	5.7%	4.1%	3.2%

Notes

1. Phases 1 & 2 assume current connections of 150. Phase 3 assumes all 390 possible project connections are achieved.
2. Phase 1 assumes a 40-year loan at 4.5%; phases 2 & 3 assume a 20-year loan at 3%.
3. Median Household Income (MHI) - \$24,518 (Census 2000)

Estimated Annual Operations & Maintenance Costs per Project Phase			
	Phase 1	Phase 2	Phase 3
Electrical	\$ 2,500	\$ 22,500	\$ 24,500
Management	\$ 45,000	\$ 45,000	\$ 50,000
Sampling & Permits	\$ 2,000	\$ 2,000	\$ 2,000
Parts & Repair	\$ 2,500	\$ 3,500	\$ 4,500
Annual O&M Total	\$ 52,000	\$ 73,000	\$ 81,000

Proposed Project Cost Estimate	
Construction Cost	
Collection System Rehabilitation	\$ 1,063,260.00
Collection System Expansion	\$ 2,995,300.00
Partial-Mix Aerated Lagoon System	\$ 906,223.36
Subsurface Infiltration Disposal System	\$ 899,819.98
Subtotal	\$ 5,864,603.34
Contingency (20%)	\$ 1,172,920.67
Subtotal	\$ 7,037,524.00
NMGRT (Mora County 5.8125%)	\$ 409,056.08
Construction Total	\$ 7,446,580.09
Non-Construction Cost	
Engineering Design, Bidding, & Construction Services (20%)	\$ 1,407,504.80
NMGRT (Santa Fe 8.0625%)	\$ 113,480.07
Non-Construction Total	\$ 1,520,984.88
Total Project Capital Cost	\$ 8,967,564.96

Proposed Project Scope of Work for Wastewater Improvements

The Mora Mutual Domestic Water Consumers and Mutual Sewage Works Association (MDWC&MSWA) wastewater system currently consists of a collection system with approximately 150 service connections and a lagoon treatment system which discharges to the Mora River. The problems which have necessitated this appropriation request are excessive infiltration in the collection system and non-compliance with a very stringent National Pollutant Discharge Elimination System (NPDES) permit. Infiltration due to high groundwater and the poor condition of parts of the collection system causes increased flow in the treatment system, which exceeds the design flow, and causes decreased wastewater constituent concentrations due to dilution. The effluent discharge limitations for total phosphorus (TP) and total nitrogen (TN) established by the NPDES permit are below the current achievable limits of technology for nutrient removal. The current limits of technology are a TP concentration of 0.1 (milligrams per liter) mg/L and TN concentration of 3.0 mg/L; the NPDES permit discharge limitations for the Mora wastewater treatment system effluent are 0.03 mg/L TP and 0.38 mg/L TN.

The U.S. Environmental Protection Agency (EPA) issued a new NPDES permit to the Mora MDWC&MSWA in September 2008, resulting from new Total Maximum Daily Load (TMDL) management plans for the Canadian River watershed, which includes the Mora River. The Surface Water Quality Bureau (SWQB) of the New Mexico Environment Department (NMED) conducted a surface water quality survey of the Canadian River watershed in 2002, and it was determined that the Mora River is impaired; the TMDLs were approved by the EPA in 2007. Based on the TMDLs, a Waste Load Allocation (WLA) was determined for the Mora MDWC&MSWA lagoon system which is prescribed in the NPDES permit.

In the USEPA-Approved Total Maximum Daily Load (TMDL) for the Canadian River Watershed - Part 1 [Mora River to the Colorado Border], September 21, 2007, it is noted that the "existing WWTP is an aerated lagoon system that is not designed to treat wastewater for TP or TN removal [and improvements to the collection system and lagoons] will not improve the plant's ability to treat for TP or TN. Alternative methods of treatment must be considered...in order to meet or address the nutrient impairment in the Mora River." This document further states "[t]his WLA recognizes the technological and economic challenge of meeting the nutrient effluent limitations presented herein..." The NPDES permit has a four-year compliance schedule, with interim milestones, to meet the established effluent limits.

As mentioned earlier, there is significant infiltration in the collection system, which must be addressed in conjunction with the treatment system. The NPDES permit design flow for the lagoon system is 52,000 gallons per day (gpd), and current influent flow measurements are approximately 540,000 gpd. Due to the technologically and economically unachievable nutrient effluent limitations, the Preliminary Engineering Report recommends discontinuing discharge to the Mora River and upgrading the treatment system to produce higher quality effluent

suitable for alternate methods of discharge. Design of the selected treatment system will be based on mitigation of the infiltration problem to reduce the capital and O&M costs of the new treatment and disposal systems.

Needs for Project - Health, Sanitation, and Security

Currently the Mora MDWC & MWSA lagoon system is not in compliance with the NPDES permit due to the infiltration in the collection system causing flow to exceed the discharge limit. However, the effluent has been meeting the discharge limits for BOD, TSS, fecal coliform, pH, and TRC, and concentrations are well below typical effluent characteristics of lagoon systems due to the dilution from infiltration. The current NPDES permit has discharge limits of 0.03 mg/L total phosphorus and 0.038 mg/L total nitrogen (30-day average), and the limits of current wastewater treatment technology for biological nutrient removal are 0.1 mg/L for total phosphorus and 3 mg/L for total nitrogen; the lagoon system is not capable of treating wastewater to these levels. These limits were imposed because the Mora River, to which the lagoon system discharges, was determined to be an impaired water under the Federal Clean Water Act, and efforts are underway to improve water quality in the Canadian River watershed.

Openings in the collection system which allow the infiltration to occur can allow untreated wastewater to leak into the surrounding soil and groundwater when groundwater levels are low, which can result in soil and groundwater contamination. The excessive infiltration causes wastewater flows to exceed the design capacity of the wastewater system, which can result in sewer backups in the collection system or overflow/bypass conditions in the treatment system; sewage backups and overflow/bypass are public health and environmental concerns. Because the design capacity is exceeded with the flows from infiltration, no additional sewer service connections are possible. Therefore, onsite liquid waste systems must remain in use in an area with high groundwater—the conditions of the onsite liquid waste systems in the area are unknown and the potential for groundwater contamination exists.

Response to Questions from Application

1. Does the project have the potential to create or save jobs in the Third Congressional District?

The project will create approximately 10 jobs for the construction company that is awarded the project and cover approximately 15% of the time for four staff members from the consultant company to manage the construction of the project.

2. Does the project improve the infrastructure in the Third Congressional District?

The proposed project consists of replacing approximately 4,350 feet of the collection system, expanding the collection system, modifying the lagoon system to operate as a 3-cell partial-mix aerated lagoon system with a complete-mix cell for nitrogen removal, and constructing an infiltration system for disposal of the treated wastewater. Based on the current funding available (\$2,321,940), the proposed project will be divided into three phases. Phase 1 consists of collection system rehabilitation to reduce infiltration and construction of a subsurface disposal system for disposal of the current wastewater flow of 44,170 gpd to eliminate discharge to the Mora River. Phase 2 consists of the lagoon system improvements. Phase 3 consists of expansion of the collection system for a larger sewer service area and expansion of the infiltration system to dispose of the additional wastewater flow.

3. Does the project contribute to the economic recovery of the district and state?

The project will build critical infrastructure, which will provide the necessary foundation for all future economic development in the area. Construction of the project will generate state and local gross receipts taxes. The construction contractor and consultant will purchase materials from suppliers, buy fuel for equipment and buy food from local establishments.

4. Does the project build on the foundation set by the American Recovery and Reinvestment Act?

Yes. As stated above, the project will stimulate the state and local economy by creating approximately 10 jobs to complete the construction of the project, approximately 15% of a consultant's time to manage the construction of the project, and generate gross receipts tax which in turn is used to create more projects.

5. Does the project improve conditions in the community for individuals and families?

Yes. The project will provide proper sewer treatment for 240 additional households. Sewer service protects both public health and the environment. Completion of the project will address the nutrient impairment in the Mora River. The communities that live along the Mora River depend on the river for agriculture to sustain their families and recreation to entertain their families. The culture of the people living in the Mora Valley has been defined by the Mora River. A healthy river is important to the culture and long-term sustainability of this community.

6. Does this project protect or preserve New Mexico's treasured natural resources?

As mentioned above, completion of the project will address the water quality deficiencies in the Mora River. The project can serve as a basis for a watershed-wide effort to restore this River back to a more natural and pristine state. In the past, the Mora River supported health populations of wildlife, including native trout. Restoring these conditions in the River will be a milestone of environmental improvement for our community.

7. Does the project improve public safety?

Yes. As stated in our response to questions five and six, the completion of the project will address public health issues and the water quality deficiencies in the Mora River, which will make it safe for cultural, agricultural and recreation uses.

8. Does the project help public officials keep the people in the Third District safe?

Yes. Completion of the project will help the Mora MDWC&MSWA Board of Directors improve the water quality deficiencies in the Mora River, which serves approximately seven communities along the Mora River. Providing professionally-operated sewer services will ensure future generations and economic development is environmentally sound and sustainable.

BEN RAY LUJAN
3RD DISTRICT, NEW MEXICO

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SUB-COMMITTEE ON
ENERGY AND ENVIRONMENT
TECHNOLOGY AND INNOVATION

Congress of the United States

House of Representatives

Washington, DC 20515

December 3, 2009

The Honorable Lisa Jackson
Administrator
Environmental Protection Agency
1200 Pennsylvania Ave NW
Mail Code 1101 A
Washington D.C. 20460

Dear Administrator Jackson,

I am writing to request your assistance on the implementation of the federal Total Maximum Daily Load (TMDL) program in a small, rural and economically modest community in my Congressional District (Mora, New Mexico).

The water quality in the Mora River has resulted in the adoption of an enforceable TMDL program in the watershed, which includes extremely costly revisions to the National Pollutant Discharge Elimination System (NPDES) permit held by the Mora Mutual Domestic Water & Sewer Association (MMDWSA) that only has 140 users.

The problem, reported to me by the local officials, is that the current TMDL scheme adopted by the State of New Mexico is not the most economical for the town of Mora, nor the most environmentally beneficial to the Mora River that could have been selected. They have also expressed that other options could have been adopted resulting in a less economically stressful and more environmentally friendly solution.

MMDWSA estimates that the current TMDL compliance plan will result in rate increases of up to \$60 a month to pay for a new system that will likely cost over \$1 million. All of these costs will be passed onto the already economically stressed ratepayers. Additionally problematic is that the current TMDL enforcement plan will do little to reduce nutrient loading to the river because MMDWSA only is responsible for a small fraction of the total loading, and MMDWSA will likely be forced to land-apply their sewage which will be very costly while complying with the TMDL, but could still result in the same nutrient loading from the sewage by turning it into a non-point source of pollution to the river.

The current enforcement plan does not have any compliance measures for reducing the non-point sources of pollution to the river. Some of these sources contribute over 90% of the pollution loading to the river including the over 900 septic/cesspool systems (many that are not working adequately) and other land-use activities contributing to the non-point source loading to the river. According to MMDWSA, the current plan will result in proliferation of new septic systems in the area by drastically raising the cost of public sewer which will only add to the non-point sources of pollution to the river.

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Under the EPA TMDL program, would it have been permissible for this TMDL for the Mora River to be implemented in an alternative manner? Such as requiring more of the loading reductions to be assigned to non-points sources such as faulty septic systems/cesspools near the river, allowing MMDWSA to pay non-point source contributors to reduce their loading to off-set their required reductions, utilizing the EPA's Water Quality Trading Policy. Additionally, could a solution be modeled after the one provided to the Town of Taos, allowing the extension sewer lines in future years to convert individual septic/cesspool systems to the public sewer system to be used as credits (for the loading reductions realized from the elimination of those individual waste disposal systems)?

If the federal TMDL program would have permitted some or any of these alternative compliance options, a plan could have been designed to be more economical and environmentally beneficial to the river. I hope that these alternatives can these still be considered to allow the opportunity for needed compliance to take place and for the longevity of the Mora River.

MMDWSA would be interested in alternative compliance options that allow for expansion of the public sewer system and the reduction of individual septic/cesspool systems, which is likely the most progressive and long-term solution to improving the river's water quality.

Thank you for your assistance. I look forward to working with you to clarify these questions to allow for this TMDL to be implemented in the most economically and environmentally beneficial manner that will result in local support of the program.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben Ray Lujan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ben Ray Lujan
Member of Congress