

National Drinking Water Advisory Council

Conference Call Minutes

June 20, 2003

Prepared for:

**United States Environmental Protection Agency
Office of Ground Water and Drinking Water**

June 23, 2003

National Drinking Water Advisory Council (NDWAC) Summary Notes of June 20, 2003 Conference Call

Participants

Present at EPA Headquarters: seven people including Brenda Johnson, Ephraim King, Cynthia Dougherty, and Veronica Blette, all of EPA.

By phone: NDWAC Chair David Spath, Bradford McLane, John Young, Blanca Surgeon, Dennis Schwartz, Vicki Ray, Graciela Ramirez-Toro, Jeff Taylor, Michael Baker, Bruce Florquist, Lynn Thorp, Rebecca Head, and Ed Thomas (National Rural Water Association - NRWA)

The conference call was convened at 11:00 a.m.

Opening Remarks

Dr. Spath reviewed council discussion from the May 2003 NDWAC meeting.

- Three items were to be addressed and language developed:
 1. The issue of whether variances are appropriate: Dr. Griffiths provided language for this at the May meeting.
 2. The issue of an affordability ceiling: Ms. Ray had said she would develop language.
 3. Changing the language of the Drinking Water State Revolving Fund (DWSRF) allocation formula: Mr. Baker had said he would develop language with help from Ms. Surgeon and Mr. Young.
- Dr. Spath then gave an overview of the structure and goals of the conference call. First, a discussion about the language that Mr. Young, Mr. Florquist, and Ms. Surgeon put together about the variance process and cumulative impacts, which everyone should have received by e-mail. Next, a discussion about Mr. Baker's language about the DWSRF allocation formula. Then a discussion about the language Mr. Schwartz put together regarding the issue of providing affordable variance technologies. Last, the floor will be opened for public comment.

Variance Process and Cumulative Effects Recommendations

- Ms. Ray sent her language to Ms. Surgeon and Mr. Young via e-mail. Mr. Young and Ms. Surgeon included some of Ms. Ray's wording in their report.
- Mr. Young said that there were some fundamental concerns with the variance process and its cumulative impacts. This can be found on pages xv and xvi of the Abstract and on pages 99 and 100 of the report.
- The first three paragraphs deal with concerns about the variance process. The wording is based on Dr. Griffiths' text. Mr. Young, Ms. Surgeon, and Mr. Florquist made some minor changes to it. They then took the recommended language back to workgroup to get their perspective and added the workgroup's comments into the language.
- The last paragraph deals with cumulative effects. Ms. Ray developed this language. Mr. Young, Ms. Surgeon, and Mr. Florquist tried to make this language as consistent with the report as possible, so they made some changes to that paragraph. Cumulative impacts have to be considered. The challenge is that doing a cumulative effects analysis at a national level is next to impossible; however, wording in the paragraph said that cumulative effects need to be considered at the state and local level. Cumulative effects should be important in deciding who gets loans, grants, and DWSRF money. The NDWAC recommends that EPA go back and define cumulative effects.

Disadvantaged Communities and DWSRF Allocation Recommendations

- Mr. Baker said that the language that has been incorporated into the document (third bullet on page 41, second bullet on page 56, and the first bullet on page 95) is different from what Ms. Surgeon and Mr. Young had written. Mr. Baker thought their language had been accepted with a minor modification, but the changes are not their language. Ms. Surgeon agreed with Mr. Baker.
- Ms. Surgeon commented that their language stated that EPA should encourage states that have not done so, to establish a disadvantaged community program to address small system affordability issues. This language somehow got changed.
- Mr. Baker moved to replace the third bullet on page 41, the second bullet on page 56, and the first bullet on page 95 with the language that Ms. Surgeon had stated. Mr. Baker had understood that workgroup had concurred with this language and had made minor changes, which were fine.

- Ms. Thorp asked why bullet six on page xii of the executive summary was taken out. Ms. Surgeon said that bullet six should not have been taken out. Bullet number six should be re-established with the language that she said earlier.
- Mr. Taylor asked if someone could read what the third bullet on page 41 should say. Mr. Baker said that the third bullet on page 41, the second bullet on page 56, and the first bullet on page 95 should read “EPA should encourage states that have not done so, to establish a disadvantaged community program to address small system affordability issues. Such funding should be consistent with the principles of the DWSRF to consider restructuring where viable.”

Variance Structure Discussion

- Mr. Young opened discussion about the variance structure language developed by Dr. Griffiths on pages 99 and 100 in the report and the first three paragraphs under NDWAC Perspective on pages xv and xvi of the Abstract.
- Mr. Baker suggested the recommendation included in the third paragraph needed to be listed as one of the bulleted recommendations listed throughout the report.
- Ms. Surgeon said that there was concern from the workgroup about this sentence because the workgroup did not look at it because that was not their charge. Ms. Surgeon recommended putting the sentence in one place where it will stand out.
- Mr. Young said that an alternative would be to highlight it in this discussion as a separate issue from the report.
- Ms. Thorp asked if Ms. Surgeon was saying that it confuses the report itself. Ms. Surgeon replied yes.
- Mr. Young commented that the workgroup did its work inside a box that said that variances will exist. But the NDWAC has gone outside the box saying that maybe variances should not exist. Dr. Spath said that if the NDWAC accepts the report, variances should be both inside and outside the box.
- Mr. Baker suggested that the sentence remain in the narrative, but because the third paragraph is making a specific recommendation, it should be pulled out and included in page xii and other places where specific recommendations are listed.
- Dr. Spath asked if anyone had specific language that the NDWAC can put in the bullets. Mr. Young recommended that the Administrator convey the limitations of variances to Congress.

Cumulative Approach Discussion

- Mr. Young said that Ms. Ray provided very good wording on the importance of considering cumulative impacts. There was concurrence that cumulative impacts need to be looked at, system by system, at the state level. Also, states are going to need direction from EPA on appropriate cumulative levels. Mr. Young, Ms. Surgeon, and Mr. Florquist focused on the responsibility of EPA to identify appropriate cumulative effects on a system-by-system basis.
- Dr. Spath asked if the NDWAC felt comfortable with doing this.
- Mr. Baker asked if this would be providing any specific directions to states for how they would set appropriate cumulative effects. Mr. Young replied that states would use criteria from EPA to encourage that a variance be granted. States could consider cumulative effects in the process of providing grants and loans. Ms. Surgeon recommended highlighting this sentence on page xvi. Mr. Young said that cumulative effects criteria from EPA is important even outside the variance process.

Disadvantaged Community Recommendations

- Mr. Baker said that the recommendation for disadvantaged communities found in the third bullet on page 41, the second bullet on page 56, and the first bullet on page 95 should be that “EPA should encourage states that have not done so, to establish a disadvantaged community program to address small system affordability issues. Such funding should be consistent with the principles of the DWSRF to reconsider structuring where viable.”
- Mr. Taylor commented that the statement Mr. Baker read was very different from the other writeup. Mr. Taylor asked where the other thought came from. Mr. Taylor asked if Mr. Baker was suggesting that the other thought be dismissed. Ms. Surgeon replied that she, Mr. Young, and Mr. Florquist discussed changing the focus to establish whole programs, instead of telling states to give funding to small systems, so it does change the focus.
- Mr. Taylor asked if everyone was comfortable with that change in intent. **Dr. Ramirez-Toro** said that their language about establishing programs is very good. Dr. Head said that she did not have a problem with encouraging the states, but would not want to mandate it to the states. Ms. Ray agreed with Dr. Head. States want to have flexibility to develop programs that fit them the best. States do not want to be mandated to make a program a specific way.

DWSRF Allocation Recommendation

- Mr. Baker said that his specific recommendation was to replace the current recommendation in the report regarding the DWSRF allocation formula. After the Council meeting, Mr. Baker and Ms. Surgeon worked on language that would focus more on the Needs Survey. One member of the workgroup did not believe the revised recommendation addressed the concern originally raised in the workgroup. Mr. Baker had phone conversations with Mr. Kasraei about his concerns. Mr. Kasraei's major concern is that states with the largest cities are getting a disproportionate share of funds and therefore affecting the ability of some states to provide loans to small systems. Mr. Baker expressed his thoughts that the overall allocation formula is beyond the scope of what the NDWAC is trying to address for small systems. However, after speaking with members of the workgroup, Mr. Baker proposed a change to the recommendation that would evaluate availability of funding for small systems. Mr. Baker recommended replacing the recommendation that is currently listed as item four on page xvii, the second bullet on page 41, the first bullet on page 56, and the last bullet on page 94 with *"EPA should determine if, as a result of the current DWSRF allocation formula, small public water systems are being disproportionately denied funding from state DWSRF programs due to inadequate funds being available."*
- Mr. Baker recommended removing all text starting as the third sentence in the third paragraph on page 44 and ending with the sentence at the top of page 44 and replacing it with the revised recommendation language. He also recommended removing Appendix 8 because it and the other text was there to support the previous recommendation.
- Dr. Head said that Mr. Baker's recommendation was a major change to what has already been proposed and discussed.
- Ms. Surgeon said that one of the issues is that many of the states are not having problems with the formula itself. The problem is that small communities cannot afford loans provided by the DWSRF program. But a member of the workgroup had noted that there is a problem in Region 3.
- Dr. Spath commented that a small system's problem is not one of not having enough money, but of accessing those loans. Dr. Spath's perspective was that there need to be mechanisms that can reach out to small systems to get them into the mix. Dr. Spath felt that Ms. Surgeon's point that small systems cannot carry loans was a good one. Small system demand does not have to do with the size of the state.
- Dr. Ramirez-Toro said the law requires that small systems have the capacity to administer the funds. Small systems may have the capacity to pay, but may not have the capacity to administer the loan.

- Ms. Thorp commented that the workgroup talks about how it is concerned about the access of funds to small systems, not just the DWSRF. Ms. Thorp does not seem to think that comes out in the summary very well. She felt that the NDWAC may be focusing too much on the DWSRF, when the intent of the whole recommendation was to look at the access of all avenues of funding to see if small systems were disproportionately denied access to funding sources.
- Ms. Surgeon said she would support Mr. Baker's language that EPA should determine if there are any problems with the current formula. Ms. Surgeon supports looking at which states are being affected by the current allocation formula.
- Dr. Spath suggested that EPA should work with other professional agencies. Ms. Surgeon said that EPA should work with other agencies to adopt programs. Mr. King said that he was not sure the existing programs are completely ineffective. Dr. Spath asked if Mr. King was suggesting that EPA should work with other agencies to strengthen existing programs and adopt new programs where needed. Mr. King replied yes. Mr. Baker suggested changing the word "programs" to "approaches." Mr. Baker suggested that the NDWAC say that EPA should work with other agencies to overcome barriers.
- Mr. Schwartz said he did not successfully download all of the language that is being discussed, and he was having difficulty finding where the proposed changes were going to be placed. Mr. Schwartz said that he was not sure he could make a judgment of how he feels about the changes.
- Dr. Spath agreed that discussing the language changes is difficult to do by conference call.
- Mr. Schwartz said that it is impossible to see the total effect of the changes on the report. Ms. Thorp disagreed. The NDWAC is only looking at a few suggested changes. They just occur over and over again throughout the report.
- Mr. Schwartz said that he was having a difficult time because he was not involved in the workgroup's discussion. Mr. Schwartz asked whether there is any reason that final consideration could be put off until the whole council meets again in November.
- Dr. Spath said that the NDWAC may need to have one more final review of the proposed changes. Dr. Spath would not like to have to wait until November. He thought that maybe the best solution was to try to work through this and come to at least an agreement on what the changes would be and put that into a final document. Then, send the final document out to people to look at and then set up a final discussion of that. Mr. Schwartz said that would be helpful.

- Mr. McLane commented that his recollection from the May meeting was that EPA is under deadlines and needs feedback from the council soon.
- Mr. King said that EPA would appreciate the advice of the NDWAC as early as possible. Mr. King suggested possibly sending out hard copies next time by FedEx to make sure there is no confusion. Mr. King said that having the NDWAC's feedback and advice would be most beneficial. If the NDWAC does not provide their advice soon, EPA may lose the opportunity to consider the NDWAC's advice in rulemaking.
- Mr. McLane suggested that if anyone has concerns with the recommended changes set forth during this conference call, they should say so now.
- Mr. Taylor said that he was very comfortable with the changes being discussed.
- Dr. Ramirez-Toro asked if it was possible to have a deadline for comments before the next conference call so this does not happen again. Ms. Thorp agreed that having a deadline for comments would help.
- Dr. Spath said that he would like to come to some understanding of the changes that the NDWAC is proposing to make, then incorporate those changes into the document and send it out electronically and in hard copy. The NDWAC could then hold a final call to agree on the document and move it on.
- Mr. McLane asked for clarification on the process from this point.
- Dr. Spath said that he would have Ms. Johnson work with Ms. Blette to incorporate the changes into the report and get the report out to everyone. Dr. Spath will give people 2 weeks to look at it and make any comments relative to the changes. Dr. Spath will then set up a conference call with notice to come to closure on the document.
- Ms. Surgeon commented that sending just the pages with the changes in addition to the changes being incorporated into the document was very helpful.
- Dr. Spath recommended that the NDWAC members should e-mail their comments to him and cc everyone else. The NDWAC can reflect upon the comments during the next conference call. Ms. Surgeon and Ms. Ray agreed with Dr. Spath's recommendation.
- Ms. Surgeon said that the NDWAC should change number eight on page xii to say that "EPA should work with other agencies to overcome barriers."
- Ms. Blette wanted to clarify whether EPA should remove pages in the document and in Appendix 8 that dealt with the issue related to the DWSRF allocation formula. Dr. Spath

asked Ms. Surgeon if that is what she wanted to do. Ms. Surgeon said that she would propose not eliminating Appendix 8.

- Mr. Baker said that he suggested striking the appendix because it is all language that speaks to the allocation formula, but not on the basis of the recommendation that he is proposing. Mr. Baker felt that it would be confusing to retain Appendix 8 when it isn't speaking to the recommendation now being made.
- Ms. Surgeon felt that the appendix should be kept in for reference. Mr. Baker said that the recommendation that he had would strike the language out of the third paragraph on page 44 and everything following that up to the allocation formula. Having that language in the report goes beyond the small system affordability report. It simply talks about an allocation formula. It does not have to do with small systems. It should be struck. It would be confusing to keep it in.
- Ms. Surgeon said that if she was the only one with a problem, then the NDWAC can take out Appendix 8.
- Dr. Ramirez-Toro asked Ms. Surgeon where in the report would the appendix provide support. Ms. Surgeon replied that if all of the text from page 44 on was being taken out, there would be no link to Appendix 8. Ms. Surgeon agreed that the whole discussion should be taken out of the report.
- Dr. Ramirez-Toro asked how this tied with the charge the group had. Ms. Surgeon replied that DWSRF funding is an option that small communities have. If that funding could be more readily available, then the allocation formula also needs to be looked at, so all states get the funding they need to give to small communities. Ms. Surgeon said that it is not directly tied to the charge the workgroup had. It goes beyond the charge.
- Ms. Dougherty commented that what the NDWAC is doing is preparing a report of NDWAC recommendations to EPA, not preparing a subcommittee report.
- Dr. Spath asked Ms. Surgeon if the NDWAC could take out Appendix 8. Ms. Surgeon replied that Appendix 8 can be taken out of the report.
- Dr. Spath said that the last issue is an e-mail from Mr. Schwartz talking about the variance issue. It speaks to EPA to provide variance technologies with every rulemaking.
- Mr. Schwartz said that it is called for under the Act, and until the Act is changed, it is something that needs to be done. Dr. Spath replied that variance technologies are only identified if a rule is considered unaffordable. Dr. Spath asked EPA if the Act requires variance technologies only when a national determination has been made that a regulation is

not affordable. Mr. King replied that the Act only requires that variance technologies are acceptable only when a national determination (at the federal level) has been made that a regulation is not affordable for small systems.

- Mr. Schwartz asked what happens if one is deemed unaffordable. Mr. King replied that EPA identifies the affordable technology for that small system class.
- Mr. Baker asked if EPA also has to identify small system technologies for each rule. Mr. King answered Yes, EPA has to identify affordable technologies.
- Mr. Schwartz asked if that is implemented and being done. Ms. Dougherty said Yes and noted it was done for arsenic.
- Mr. Schwartz asked if the fact that those technologies have been identified is the reason that variances have not been an issue. Mr. King replied that if EPA makes a determination that a regulation is not affordable for a small system size category, then EPA provides guidance for other small system variance technologies, but only after EPA determines that a regulation is unaffordable.
- Mr. Schwartz said that he is not sure why there is so much confusion on variances then.
- Ms. Surgeon commented that there are so many other options for small communities. The law does not mandate variances. Variances are an option. The point is to work together to get communities where they need to be in order to provide the best water. Ms. Surgeon said that she would rather spend her time and effort looking into other options.
- Mr. Young commented that clearly there are a lot of other options that address the issue of affordability, which is why the report is so large.
- Mr. Baker said that EPA does have to go in and identify affordable technologies geared towards small systems. Arsenic is an example where EPA did that, including point-of-use devices. The concern of going to states on a state-by-state basis is that the state would have to evaluate every system.
- Ms. Surgeon said that there will be exceptions anywhere. Even if variances are identified, they may not be achievable.
- Dr. Spath asked Mr. Schwartz if he was proposing that EPA look at communities differently. Mr. Schwartz replied that the NDWAC is concerned that local communities may be able to maintain some self-determination in how they will allocate their available funds for public health. Mr. Schwartz is not sure local communities are left with those options.

- Dr. Spath agreed that this issue is a problem.
- Mr. Schwartz moved that this language would be incorporated on page xv of the abstract and on page 99 of the report. Dr. Spath asked if anyone would second that. Nobody would second.

Public Comment

- Dr. Spath opened the conference call to public comment.
- Ed Thomas from NRWA commented that EPA has to list the variance technologies. The NDWAC is totally going around that, saying EPA does not have to do that.
- Mr. Schwartz replied that the only time EPA is required to identify variance technologies is when a rule is deemed unaffordable for a certain group of water systems.
- Mr. Young replied that what the NDWAC is saying is that if something is determined at a national level to be unaffordable, then cumulative effects should be considered at a system-by-system level when states grant a variance.

Concluding Remarks

- Dr. Spath said that the NDWAC has a set of recommendations that have been put forward. Ms. Johnson and Ms. Blette will put those recommendations into the report, as well as making a separate document of just the recommendations. Ms. Johnson and Ms. Blette will send out the documents via FedEx and e-mail. The NDWAC will have 2 weeks to review and make comment. Then the NDWAC will have a conference call set up shortly thereafter to come to closure on the recommendations of the report.
- Dr. Spath asked for a motion to close the conference call. Mr. Young so moved. Ms. Surgeon seconded.
- Dr. Spath closed the conference call by saying that he will work with Ms. Johnson and Ms. Blette to get the document out as quickly as possible. Dr. Spath asked that everyone let Ms. Johnson know what their plans are within the next 2 to 4 weeks.
- The conference call ended at 1:00 p.m.