

Water-quality standards unfairly burden rural communities

by Judith Lewis Mernit

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When Clarence Aragon began managing the half-century-old Mora Mutual Water and Sewer Association 12 years ago, he thought he was helping the environment. Hundreds of households around Mora, N.M. -- a small river-valley community on the eastern slope of the Sangre de Cristo Mountains -- flush wastewater through subpar septic systems, sending trickles of variably treated sewage into a shallow aquifer and eventually to the Mora River. But Aragon's 1,000 or so subscribers employ one of rural New Mexico's few treatment plants, a system of lagoons that oxygenate the water while special bacteria digest harmful sludge.

The system isn't perfect, Aragon admits: The lagoons need repairs, and even when they're working properly, they weren't designed to reduce algae-fueling nutrients -- nitrogen and phosphorous -- enough to meet up-to-date water-quality standards. But building a treatment plant to meet those standards, which originated in a 1997 environmentalist lawsuit against the U.S. Environmental Protection Agency, would cost around \$7 million.

"This is a community with zero economy and 25 percent unemployment," Aragon says. "Even if someone were to write me a check for (that system), we couldn't afford to run it."

So the EPA will soon revoke Mora Mutual's permit to discharge into the river, leaving Aragon with two choices: Build a new treatment plant a half-mile from the river that would treat wastewater less stringently than the EPA requires and let it percolate into Mora's groundwater -- the community's only source of drinking water -- or abandon his subscribers to septic tanks. "There's no law that says we have to have a sewer service," he says.

James Bearzi, the New Mexico Environment Department's chief of surface water quality, calls that second option an "outrageous proposition," one that "would dramatically increase the total amount of contamination in the Mora River Valley."

But Aragon feels increasingly pushed in that direction. In mid-October, the EPA sent him a letter warning that he was about to incur fines of \$5,400 per day because he hasn't fixed his lagoons. Never mind that the state told him several years ago to cease work on that upgrade because the lagoons could never meet the new permit's terms.

Aragon wrote back, reminding the EPA of Mora Mutual's history. But the threat compounded his frustration. "The people who formed this association did so because they cared about the community's health and safety," he says. "Now it's turned into something we can't afford."

Mora Mutual's predicament echoes thousands in the rural West: small, community-run drinking water and sewer associations entangled in state and federal water-quality laws whose terms they can't afford to meet. Even as environmental groups were suing the EPA over water in New Mexico, they were also suing in nearly every state from California to Maryland. At issue was a long-overlooked provision in the Clean Water Act ordering states to analyze their waterways and set "total maximum daily loads," or TMDLs, for pollutants in them. The EPA was obligated by law to step in where those states refused. Tens of thousands of TMDLs have since been set for everything from heavy metals to unnaturally high temperatures. And local governments with shrinking budgets are straining to meet them.

"We struggle with this all the time," Bearzi says. In New Mexico, the state writes the TMDL and the EPA includes that standard in a discharge permit; the state has no legal authority to intervene in the enforcement process. "Every time we go to (the EPA) with a TMDL for nutrients in a rural area, it becomes a problem for whatever wastewater treatment plants are in that watershed. Ten thousand dollars might as well be \$10 million to them."

TMDLs have yielded unqualified successes. In California's Los Angeles County, for example, they've inspired laws requiring buildings to retain rainfall and inland cities to install screens to catch trash in storm drains. That's in part because the Legislature went after scattered, or "nonpoint," pollution sources, holding whole communities accountable for what runs off of their streets. "California has done an excellent job of regulating nonpoint sources of pollution," says Alexis Strauss, who oversees the water programs for the EPA's Pacific Southwest region.

Then again, Los Angeles is a urban area, with millions of people to share costs and hundreds of participants to hammer out agreements. When the TMDL for trash in the Los Angeles River was set at an unattainable zero, regulators agreed that simply installing catch screens was good enough. "It was the spirit of the law, not the letter of the law," says Joyce Neal Amaro, public education coordinator for the City of Los Angeles' stormwater program. "And we're seeing water quality improve."

Still, in rural California, state water authorities continue to exempt certain agricultural producers from TMDLs; California's latest water inventory, submitted to the EPA in early October, shows that more than half the state's bodies of water fall short of "water quality goals." Many rivers and wetlands suffer from the same nonpoint source pollution that afflicts nearly every state's waters: agricultural runoff.

"TMDLs are a fine gesture in the right direction," says Joe Gutkoski, the founder of Montana River Action, who cautiously cheered a district court judge's October ruling ordering the state to develop TMDL-based cleanup plans by 2014. "But agriculture is still in the hands of Jesus in this state."

And so it is in New Mexico, where despite a recent, hard-won agreement to control wastewater from dairy farms, the state regulates agricultural runoff through voluntary programs. Few laws govern septic. So the only polluter that regulators can target for a waterway's problems is the federal permit holder -- in this case, a small nonprofit water association originally created to protect the water.

Aragon will likely leverage a \$1.8 million federal grant to build a groundwater discharge system, turning Mora Mutual into a nonpoint source. But he'd prefer to build that same plant on the river and expand his services -- reducing overall septic pollution in the valley in exchange for a more relaxed permit for discharge into the river. The EPA has already rejected that proposal, however, "and with our current financial situation, there's no chance of us getting more subscribers," Aragon says. With upcoming rate hikes, in fact, he may very well lose them.

Bearzi doesn't yet know the answer. "The state water quality people, the local community, our own Legislature have to come together to figure out a solution for Mora," he says. "This is a problem that took decades to manifest. It's going to take years to resolve."

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