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From: Hurst, Blake <bhurst@mofb.com>
Sent: Wednesday, September 18, 2013 2:35 PM
To: Hoke, John
Cc: DNRContact, lholloway@mofb.com; B Frankenbach; Darrick H. Steen
Subject: Comments on Water Quality Standards Proposed Rule
Attachments: wqcommentletter (2).docx

Importance: High

John:

Please find attached comments submitted on behalf of Missouri Farm Bureau and the Missouri Corn Growers Association.

Thank you.

<<wqcommentletter (2).docx>>



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The following comments on the proposed water quality standards rule (10 CSR 20-7.031) are submitted jointly on behalf of Missouri Farm Bureau and the Missouri Corn Growers Association.

In 2001 the Missouri Department of Natural Resources (Department) laid out a three-phase schedule for addressing 28 directives issued in late 2000 by the U.S. Environmental Protection Agency (EPA) pertaining to state water quality standards. In a written response to EPA, the Department noted that “there is a very large number of changes that may be contemplated” and indicated “we plan to conduct several separate consecutive rulemakings.” (Letter dated March 8, 2001, to Gale Hutton from John Young) Protection of unclassified waters was listed among those assigned to Phase 3.

As a result of a lawsuit filed against EPA in 2003 and settled in December 2004, the Department was compelled to meet an aggressive schedule for action required by several of EPA’s directives. Although the settlement did not address water classification, the Department continued working with stakeholders toward a proposed rule on this as well as items specified in the settlement.

Another lawsuit was filed in 2010 seeking to require EPA to force the Department to promulgate a proposed rule with certain specifications for water classification. In its ruling, the court declined to preempt EPA’s oversight authority.

Despite ongoing controversy, the Department has worked diligently to craft the least burdensome proposed rule that satisfies EPA’s directive by complying with the federal Clean Water Act. We appreciate the Department’s efforts to solicit stakeholder input throughout the process. Furthermore, we recognize that the Department must take action or risk having EPA assume responsibility for the rulemaking.

Nevertheless, the magnitude of the projected costs associated with this proposal cannot be ignored. The Department estimates billions of dollars in total will be spent directly by public and private wastewater treatment facilities, other permitted entities, and the Department itself. Furthermore, no estimates of direct and indirect costs to private citizens have been included.

Consequently, we urge the Department to take every precaution to avoid classifying waters that should not be classified, including expediting the development of assessment protocols discussed with stakeholders and clarifying how information contained in the MoRAP (Missouri Resource Assessment Partnership) Aquatic Gap project will be used.

The universe of waters encompassed by the “enhanced” 1:100K scale National Hydrography Dataset (NHD) compared with the universe defined by the actual 1:100K scale NHD remains unclear. Under “Designation of Uses” ((2)(D)1.) the proposed rule states, *“The 1:100K NHD scale shall be enhanced and supported by sufficient and reliable hydrologic and biological data to categorize waters according to aquatic habitat uses described in paragraph (1)(C)1. of this rule. This data will be based on information contained in the MoRAP Aquatic Gap project, and supplemented as needed with data having established quality and quantity characteristics referenced by Missouri Listing Methodology at 10 CSR 20-7.050.”*

For purposes of the proposed rule, the published report “A Gap Analysis for Riverine Ecosystems of Missouri, 2005 Final Report” is cited as the source of information contained in the MoRAP Aquatic Gap project.

In the report’s executive summary, MoRAP researchers describe as the project’s principal goal “to identify riverine ecosystems and species not adequately represented (i.e., gaps) in the matrix of conservation lands in Missouri.” In detailing their methodology and analysis, they note potential inaccuracies and caution against using the data inappropriately. The “Disclaimer” section of Chapter 10, Product Use and Availability, includes the following statements:

“This disclaimer applies to both individual use of the data and aggregate use with other data...These data are meant to be used at a scale of 1:100K or smaller (such as 1:250,000 or 1:500,000) for assessing the conservation status of animals and vegetation types over large geographic regions. The data may or may not have been assessed for statistical accuracy...”

Another section of Chapter 10, “Appropriate and Inappropriate Use of these Data,” presents lists of “Appropriate Uses” and “Inappropriate Uses” with the further disclaimer, “For most uses, it is unlikely that GAP will provide the only data needed, and for uses with a regulatory outcome, field surveys should verify the result.” One of the inappropriate uses listed is “establishing exact boundaries for regulation or acquisition.”

Clearly, the MoRAP Aquatic Gap project report does not and is not intended to provide the basis for regulation. The proposed rule should be modified to specify that only the hydrological and physical stream data contained in the report will be used to “enhance” the 1:100K scale NHD where mapping data on the 1:100K scale map is incomplete.

Thank you for the opportunity to comment.



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Gary Marshall, Executive Director
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