

**DRAFT  
MINUTES OF THE  
MISSOURI CLEAN WATER COMMISSION MEETING  
Echo Bluff State Park  
34489 Echo Bluff Drive  
Eminence, Missouri**

**October 5, 2016**

**Present**

Buddy Bennett, Chair, Missouri Clean Water Commission

Ashley McCarty, Missouri Clean Water Commission

John Cowherd, Missouri Clean Water Commission

Dennis Wood, Missouri Clean Water Commission

Wallis Warren, Missouri Clean Water Commission

Sam Leake, Missouri Clean Water Commission

John Madras, Director of Staff, Missouri Clean Water Commission

Shawna Bligh, Legal Counsel, Missouri Clean Water Commission

Susan Borton, Secretary, Missouri Clean Water Commission

Mike Alesandrini, AECOM, St. Louis, Missouri

Joe Boland, EIERA, Jefferson City, Missouri

Robert Brundage, Newman, Comley, and Ruth, Jefferson City, Missouri

David Casaletto, Ozarks Water Watch, Kimberling City, Missouri

Andrea Collier, Department of Natural Resources, Jefferson City, Missouri

Eric Crawford, Department of Natural Resources, Jefferson City, Missouri

Kim Dickerson, AECI, Clifton Hill, Missouri

Brad Eichelberger, Eichelberger Farms, Inc., Wayland, Iowa

Angela Falls, Department of Natural Resources, Jefferson City, Missouri

Dale Fischer, Citizen, Fulton, Missouri

Eric Fuchs, MRWA, Mill Spring, Missouri

Phil Glenn, Glenn Acres Farm, Inc., Fulton, Missouri

Sylvia Glenn, Glenn Acres Farm, Inc., Fulton, Missouri

Gregg Hagerty, AECOM, St. Louis, Missouri

Leslie Holloway, Missouri Farm Bureau, Jefferson City, Missouri

Jay Hoskins, MSD, St. Louis, Missouri

Steve Jeffery, Hickory Neighbors United (HNU) and Friends of Responsible Agriculture (FORAG)

Jeff Jones, Citizen, Fulton, Missouri

Ross Kidwell, Citizen, Fulton, Missouri

Shirley Kidwell, Citizen, Fulton, Missouri

Brook McCarrick, Attorney General's Office (AGO), Jefferson City, Missouri

Margot McMillen, Citizen, Fulton, Missouri

Refaat Mefrakis, Department of Natural Resources, Jefferson City, Missouri

Kevin Perry, REGFORM, Jefferson City, Missouri

Karla Pierce, Independence WPC, Independence, Missouri

Todd Sampsell, Missouri Department of Natural Resources, Jefferson City, Missouri

Jill Sellenriek, Citizen, Fulton, Missouri

Terry Spence, Citizen, Unionville, Missouri

Jeff Starr, Department of Natural Resources, Jefferson City, Missouri

Sherri Stoner, Department of Natural Resources, Jefferson City, Missouri

Leanne Tippet Mosby, Department of Natural Resources, Jefferson City, Missouri

Phil Walsack, Missouri Public Utility Alliance, Columbia, Missouri

Julie Wheeler, Citizen, Fulton, Missouri

Jimmy Williams, Department of Agriculture, Jefferson City, Missouri

## CALL TO ORDER

Chair Bennett called the meeting of the Missouri Clean Water Commission to order on October 5, 2016 at 10:14 a.m., at Echo Bluff State Park, 34489 Echo Bluff Drive, Eminence, Missouri.

Chair Bennett introduced the Commissioners, Staff Director, Legal Counsel, and the Commission Secretary.

## ADMINISTRATIVE MATTERS

### **Public Hearing on the Proposed Amendment to 10 CSR 20-8.500 Secondary Containment for Agrichemical Facilities**

#### **Agenda Item #1**

Refaat Mefrakis, Water Protection Program, presented the Proposed Amendment to 10 CSR 20-8.500 Design Requirements for Agrichemical Facilities. The regulation establishes the design criteria for the construction of secondary and operational area containment structure at all agrichemical facilities. The purpose of the rule is to require that agrichemical operations are designed to ensure that material remains within the control of the operation and doesn't cause environmental damages. The public comment period will close on November 17 at 5 p.m. Chair Bennett asked questions. No action was taken by the Commission.

### **Approval of the July 13, 2016 Missouri Clean Water Commission Meeting**

#### **Minutes**

#### **Agenda #2**

**Commissioner Cowherd moved to approve the July 13, 2016 meeting minutes as presented. Vice Chair McCarty seconded the motion. The motion passed with a roll call vote:**

<b>Commissioner Warren:</b>	<b>Yes</b>
<b>Commissioner Leake:</b>	<b>Abstain</b>
<b>Commissioner Cowherd:</b>	<b>Yes</b>
<b>Commissioner Wood:</b>	<b>Yes</b>
<b>Commissioner Parnell:</b>	<b>Not in attendance</b>
<b>Vice Chair McCarty:</b>	<b>Yes</b>
<b>Chair Bennett:</b>	<b>Yes</b>

### **Approval of the July 13, 2016 Missouri Clean Water Commission Closed Meeting**

#### **Minutes**

#### **Agenda #3**

**Commissioner Warren moved to approve the July 13, 2016 closed meeting minutes as presented. Commissioner Wood seconded the motion. The motion passed with a roll call vote:**

<b>Commissioner Warren:</b>	<b>Yes</b>
<b>Commissioner Leake:</b>	<b>Abstain</b>
<b>Commissioner Cowherd:</b>	<b>Yes</b>
<b>Commissioner Wood:</b>	<b>Yes</b>
<b>Commissioner Parnell:</b>	<b>Not in attendance</b>
<b>Vice Chair McCarty:</b>	<b>Yes</b>
<b>Chair Bennett:</b>	<b>Yes</b>

**Approval of the August 3, 2016 Missouri Clean Water Commission Meeting Minutes**  
**Agenda #4**

**Commissioner Leake moved to approve the August 3, 2016 meeting minutes as presented. Commissioner Warren seconded the motion. The motion passed with a roll call vote:**

**Commissioner Warren: Yes**  
**Commissioner Leake: Yes**  
**Commissioner Cowherd: Yes**  
**Commissioner Wood: Yes**  
**Commissioner Parnell: Not in attendance**  
**Vice Chair McCarty: Yes**  
**Chair Bennett: Yes**

**Approval of the August 3, 2016 Missouri Clean Water Commission Closed Meeting Minutes**  
**Agenda #5**

**Commissioner Leake moved to approve the August 3, 2016 closed meeting minutes as presented. Commissioner Warren seconded the motion. The motion passed with a roll call vote:**

**Commissioner Warren: Yes**  
**Commissioner Leake: Yes**  
**Commissioner Cowherd: Yes**  
**Commissioner Wood: Yes**  
**Commissioner Parnell: Not in attendance**  
**Vice Chair McCarty: Yes**  
**Chair Bennett: Yes**

**Approval of the September 2, 2016 Missouri Clean Water Commission Closed Meeting Minutes**  
**Agenda #6**

**Commissioner Leake moved to approve the September 2, 2016 closed meeting minutes as presented. Commissioner Cowherd seconded the motion. The motion passed with a roll call vote:**

**Commissioner Warren: Yes**  
**Commissioner Leake: Yes**  
**Commissioner Cowherd: Yes**  
**Commissioner Wood: Abstain**  
**Commissioner Parnell: Not in attendance**  
**Vice Chair McCarty: Yes**  
**Chair Bennett: Yes**

**Approval of the September 20, 2016 Missouri Clean Water Commission Closed Meeting Minutes**  
**Agenda #7**

**Commissioner Wood moved to approve the September 20, 2016 closed meeting minutes as presented. Commissioner Warren seconded the motion. The motion passed with a roll call vote:**

**Commissioner Warren:** Yes  
**Commissioner Leake:** Abstain  
**Commissioner Cowherd:** Yes  
**Commissioner Wood:** Yes  
**Commissioner Parnell:** Not in attendance  
**Vice Chair McCarty:** Yes  
**Chair Bennett:** Yes

**Callaway Farrowing, LLC Appeal No. 14-1978 CWD**  
**Agenda #8**

**A. Motion to Reopen the Callaway Farrowing, LLC Appeal No. 14-1978 Hearing Record**  
**Agenda #8A**

Shawna Bligh, Legal Counsel, Missouri Clean Water Commission, noted, for the record that Commissioner McCarty was not present for any consideration, vote, or deliberation of agenda item number eight, the Callaway Farrowing permit. She also noted for the record that Commissioner Parnell was also not present. She also stated that the Commission indicated they are limiting arguments on this motion to five minutes and that arguments would only be by counsel for the parties. Chair Bennett provided background and comments on the Callaway Farrowing, LLC Appeal. Robert Brundage, Newman, Comley, and Ruth, introduced Brad Eichelberger, Vice President of Eichelberger Farms, Inc., and stated that Eichelberger Farms is the sole member of Callaway Farrowing, LLC. He provided detailed comments and requested the Commission grant his client's motion to reopen the administrative record with respect to the Callaway Farrowing permit. Steven Jeffery, counsel for FORAG, provided comments and handed out a binder of information that he stated was contained in the administrative record. He stated that the operating agreement for Callaway Farrowing specifically provided that its members were not liable for any debt, or other obligations of Callaway Farrowing, LLC. As such, Mr. Jeffery requested that the Commission deny the motion. Ms. Bligh noted for the record that this was the first time that the Commission was presented with the binder, so they have not had the opportunity to substantially review the materials within the binder. She also noted that if the Commission decided to grant the motion to reopen the administrative record, that the Commission would not proceed to a vote on whether to adopt the recommendation of the Administrative Hearing Commission at the meeting today, but would schedule another meeting to entertain any additional testimony consistent with the motion to reopen the record.

**The motion to reopen the hearing failed due to lack of a motion.**

**B. Callaway Farrowing, LLC Appeal No. 14-1978 Administrative Hearing Commission's Recommended Decision**  
**Agenda #8B**

Ms. Bligh advised the parties that the Commission would again entertain a limited time for arguments on the Recommended Decision of the Administrative Hearing Commission for the Callaway Farrowing permit. Brook McCarrick, counsel for DNR, recommended that the Commission adopt the Recommended Decision of the Administrative Hearing Commission with the exception of the depth and volume tables as DNR did not believe that these tables were necessary with respect to the Callaway Farrowing facility/site. Mr. Brundage requested enlargement of the prescribed five minute time limitation for presenting arguments on the Recommended Decision of the Administrative Hearing Commission due to the amount of information to be covered.

**Commissioner Cowherd moved to allow the attorney's from both sides additional time of 15 minutes for oral argument on Callaway Farrowing. Commissioner Wood seconded the motion. The motion passed with a roll call vote:**

**Commissioner Warren: Yes**  
**Commissioner Leake: No**  
**Commissioner Cowherd: Yes**  
**Commissioner Wood: Yes**  
**Commissioner Parnell: Not in attendance**  
**Vice Chair McCarty: Not present**  
**Chair Bennett: Yes**

Mr. Brundage thanked the Commission for the additional time, and stated because of the limited time would focus on the issue of continuing authority, as related to the Callaway Farrowing permit and the Recommended Decision of the Administrative Hearing Commission. He provided detailed comments and background. He asked that the Commission adopt the Recommended Decision of the Administrative Hearing Commission. Mr. Jeffery provided comments and reviewed the binder that he previously provided to the Commissioners. He suggested that the Commission not adopt the Recommended Decision of the Administrative Hearing Commission. Commissioners Wood, Leake, Warren, Cowherd, and Chair Bennett all provided comments.

**Commissioner Cowherd moved to adopt the Recommended Decision of the Administrative Hearing Commission to uphold the permit. Commissioner Leake seconded the motion with reservation. The Commission voted 3-2 in favor of the motion with a roll call vote:**

**Commissioner Warren: No**  
**Commissioner Leake: Yes**  
**Commissioner Cowherd: Yes**  
**Commissioner Wood: Yes**  
**Commissioner Parnell: Not in attendance**  
**Vice Chair McCarty: Not present**  
**Chair Bennett: No**

Ms. Bligh advised the Commission of the requirements of Section 644.066.3(3) of the Revised Statutes of Missouri, which required that all final orders, determinations or final actions by the Commission shall be approved in writing by at least four members of the Commission. Ms. Bligh noted for the record that two Commissioners were ordered not to participate in any consideration, deliberation or vote on the Callaway Farrowing permit. Ms. Bligh also noted that while there existed a doctrine in administrative law, referred to as the rule of necessity, that could allow the otherwise disqualified Commissioners to vote on the Callaway Farrowing permit, she would not advise those Commissioners, at this time, to participate in any consideration, deliberation or vote on the Callaway Farrowing permit, as she was keenly aware of the Order issued by Judge Green of the Circuit Court of Cole County and would not put her clients in the position of running afoul of that order and possibly subject Commissioners Parnell and McCarty to any allegation of contempt of court. Chair Bennett noted that the Commission, based on the 3-2 count voted to adopt the Recommended Decision of the Administrative Hearing Commission, even in recognition of Ms. Bligh's advice as to the requirements of Section 644.066.3(3).

**Approval on the Proposed FY17 Clean Water Intended Use Plan**  
**Agenda #9**

Eric Crawford, Water Protection Program, presented a summary of the Proposed Fiscal Year 2017 Clean Water State Revolving Fund Intended Use Plan. The draft version was placed on public notice on July 1, 2016, the public hearing was held on August 3, 2016, and the comment period closed on August 10, 2016. Copies of the comments and responses were provided. The changes made between the draft copy and the copy presented is itemized in the briefing packet and are primarily related to updated project status and funding amounts. The Department recommends that the Commission adopt the Fiscal Year 2017 Clean Water State Revolving Fund Intended Use Plan.

**Commissioner Wood moved to approve the Proposed FY17 Clean Water State Revolving Fund Intended Use Plan. Commissioner Cowherd seconded the motion. The motion passed with a roll call vote:**

**Commissioner Warren: Yes**  
**Commissioner Leake: Yes**  
**Commissioner Cowherd: Yes**  
**Commissioner Wood: Yes**  
**Commissioner Parnell: Not in attendance**  
**Vice Chair McCarty: Yes**  
**Chair Bennett: Yes**

**A. Small Borrower Loan Application for the City of Barnett**  
**Agenda #9A**

Eric Crawford, Water Protection Program, presented the Small Borrower Loan application for the city of Barnett. The city of Barnett has requested a small borrower loan of \$84,225 to fund the costs of the upgrades to their treatment facility. The Department recommends that the Commission approve the allocation of funding in the amount of \$84,225 for a small borrower loan to the city of Barnett.

**Commissioner Leake moved to approve the Small Borrower Loan Application for the City of Barnett. Commissioner Warren seconded the motion. The motion passed with a roll call vote:**

**Commissioner Warren: Yes**  
**Commissioner Leake: Yes**  
**Commissioner Cowherd: Yes**  
**Commissioner Wood: Yes**  
**Commissioner Parnell: Not in attendance**  
**Vice Chair McCarty: Yes**  
**Chair Bennett: Yes**

**Approval of the Water Quality Trading Framework Document**  
**Agenda #10**

Angela Falls, Water Protection Program, provided information and background on Missouri Water Quality Trading Framework. The framework defines the major elements that any entity seeking to create a trading program would need to provide to the Department in its water quality trading prospectus. Public comments were accepted from June 24 to August 24, 2016, and are included in the most recent framework presented. The Department recommends that the Commission approve the Water Quality Trading Framework.

**Commissioner Warren moved to adopt the Water Quality Trading Framework Document. Commissioner Cowherd seconded the motion. The motion passed with a roll call vote:**

**Commissioner Warren: Yes**  
**Commissioner Leake: Yes**  
**Commissioner Cowherd: Yes**  
**Commissioner Wood: Yes**  
**Commissioner Parnell: Not in attendance**  
**Vice Chair McCarty: Yes**  
**Chair Bennett: Yes**

## **PRESENTATIONS**

### **State Water Plan Update**

Sherri Stoner, Water Resources Center, discussed the state water plan update. The Department is in the beginning stages of the updated Missouri water plan. On September 30 the U.S. Army Corps of Engineers awarded a contract with CDM Smith to formally begin work on the water plan. A project meeting with the Department, contractors, and the Corps is scheduled for November 2, 2016 in Jefferson City. The Department will do their best to complete the project in 24 months as originally committed, which means a draft final Missouri State Water Plan should be available at the end of the 24-month project period or October 31, 2018; however, the plan requires legislative review and approval which could add a year to that completion date. She discussed the budget and funding and answered questions from the Commission. Andrea Collier, Director of the Water Resources Center, provided detailed comments. No action was taken by the Commission.

### **Director's Update**

John Madras, Director, Water Protection Program reported the following to the Commission:

- Todd Sampsell, Deputy Director, Water Protection Program, updated the Commission on changes in the Department Director, with Director Sara Parker Pauley moving to the Missouri Department of Conservation and Harry Bozoian becoming Director.
- There was a Continuing Authority meeting on September 21 at which relevant problems were identified, many related to small wastewater facilities and none with CAFOs. Staff will prepare options and convene a meeting to present them to stakeholders, with rule development to follow.
- The federal e-reporting rule becomes effective in December, and the Department is preparing a plan to comply with it.
- The water quality standards rule is in the final stages of review and the Department anticipates filing it later this month for a December publication and January hearing.
- Department staff have provided extensive information to the Commissioners, and if there are other items that could be provided, they are open to suggestion.

### **Public Comment and Correspondence**

Phil Walsack, Missouri Public Utility Alliance, commented on the depth of meeting minutes and his interest in handling municipal problems assertively with the municipalities themselves rather than through managing them by outside parties such as receivers. Commissioner Warren commented.

Kevin Perry, REGFORM, provided further comments on Continuing Authority noting that industrial permit holders do not appear to present such problems. He encouraged the

Commissioners to watch the video from the Continuing Authority Workgroup meeting that was held.

Phil Glenn, President, Glenn Acre Farms Inc., and a member of Friends for Responsible Agriculture, began commenting on CAFO matters, but did not continue when his comments appeared to be ex parte communication on a matter before the Commission as pointed out by Ms. Bligh. Mr. Glenn acknowledged her comment and did not continue.

No action was taken by the Commission.

**The Clean Water Commission went into closed session pursuant to Section 610.021(1), RSMo, to discuss matters identified in that provision, which include legal actions, causes of action or litigation and confidential or privileged matters.**

**Missouri Clean Water Commission Meetings**

- January 11, 2017, Lewis and Clark State Office Building
- April 5, 2017, Lewis and Clark State Office Building
- July 12, 2017, Lewis and Clark State Office Building
- October 4, 2017, Lewis and Clark State Office Building

**ADJOURNMENT OF MEETING**

**Commissioner Leake made a motion the Commission adjourn the meeting. Commissioner Warren seconded the motion. The motion passed with a roll call vote.**

<b>Commissioner Warren:</b>	<b>Yes</b>
<b>Commissioner Leake:</b>	<b>Yes</b>
<b>Commissioner Cowherd:</b>	<b>Yes</b>
<b>Commissioner Wood:</b>	<b>Yes</b>
<b>Commissioner Parnell:</b>	<b>Not in attendance</b>
<b>Vice Chair McCarty:</b>	<b>Yes</b>
<b>Chair Bennett:</b>	<b>Yes</b>

**Commission adjourned the open meeting at 2:13 p.m.**

Respectfully Submitted,

John Madras  
Director of Staff