

1 BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES
 MISSOURI CLEAN WATER COMMISSION

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3

 PUBLIC HEARING
 Draft 2016 303(d) List

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 January 6, 2016
 Lewis and Clark State Office Building
 1101 Riverside Drive
 Jefferson City, MO 65102

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11 Before:

12 Todd Parnell - Chair

 Buddy Bennett - Vice Chair

13 John Cowherd - Commissioner

 Samuel Leake - Commissioner

14 Ashley McCarty - Commissioner

 Wallis Warren - Commission

15

16 THE COURT REPORTER:

17 Jenna Petree

 MIDWEST LITIGATION SERVICES

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 Columbia, MO 65201

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1 PROCEEDINGS

2 CHAIRMAN PARNELL: The Commission will begin
3 the public hearing on the proposed 2016 303(d) Impaired
4 Water List. The purpose of this public hearing is to
5 provide the Department opportunity to present testimony and
6 to provide both the Department and the public the
7 opportunity to comment on the impaired waters list.

8 This public hearing is not a forum for debate
9 or resolution of issues. The Commission ask that those
10 commenting limit their testimony to five minutes and not
11 repeat comments that others have already made. The
12 Commission will first hear testimony from the Department.
13 Following the Department's testimony, the Commission will
14 give the public an opportunity to comment. We ask that all
15 individuals present fill out an attendance card so our
16 records are complete. If you wish to present verbal
17 testimony, please indicate that on your attendance as well.

18 When you come forward to present your
19 testimony, please speak into the microphone and begin by
20 identifying yourself to the court reporter.

21 Following the public hearing today, the
22 Commission will review testimony presented and make
23 appropriate modifications to the proposed documents. The
24 Commission plans to take final action at the April 1, 2016
25 meeting.

1 The court reporter will now swear in anyone
2 wishing to testimony at this hearing. Will all those
3 wishing to comment, please stand.

4 The following individuals, TRISH RIELLY and LESLIE
5 HOLLOWAY, were duly sworn and present the following
6 testimony:

7 CHAIRMAN PARNELL: Thank you. All right. I
8 will call forward Trish Rielly, please.

9 MS. RIELLY: Good morning, Commissioners.
10 Again, my name is Trish Rielly. I'm the supervisor of the
11 Monitoring and Assessment Unit within the Watershed
12 Protection Section of the Water Protection Program. Again,
13 today I will be providing information on the draft 2016
14 303(d) List of impaired waters currently posted on the
15 Department's website for public comment.

16 The Federal Water Pollution Control Act,
17 Section 303(d), requires states to biennially -- two times
18 a year -- submit to the U.S. Environmental Protection
19 Agency a list of impaired waters for which adequate
20 pollution controls have not yet been met -- or have not
21 been required.

22 The Commission approved the 2016 Listing
23 Methodology on July 9 of 2014, which was followed to assess
24 the water on this draft 2016 303(d) List. The list was
25 placed on public notice on October 1, 2015 and continues

1 through January 31 of 2016 -- did I say that right? Was
2 put on public notice October 1, 2015 and then continues
3 through January 31 of 2016.

4 The Department has held two public
5 availability meetings to discuss the draft 303(d) List.
6 These meetings were held on November 3rd of 2015 and
7 December 1st of 2015. A list of attendees and the summary
8 of the meetings can be found on the Department's website.

9 To date, the Department has received four
10 written comments on the draft 2016 303(d) List. The
11 comments were received from the City of Independence, the
12 Newman, Comley & Ruth Law Firm, Boone County, and the USEPA
13 Region 7. Written comments will continue to be received
14 through January 31st of 2016. All public comments -- all
15 public comments, along with the Department's responses,
16 will be -- become part of the public administrative record
17 and will be available on the Department's website.

18 A summary of the draft 2016 list of impaired
19 waters: The draft 2016 303(d) List being presented today
20 is composed of 448 waterbody/pollutant pairs;
21 fifty-seven -- or I'm sorry -- 75 of these are new to the
22 2016 list; and the remaining 373 listings are carried over
23 from the EPA approved 2014 303(d) List.

24 Of the 75 new listings, 21 streams and 2 lakes
25 were assessed under the new stream classification system at

1 the 1:100,000 scale National Hydrography Dataset. The
2 specific uses that were assessed under this provision
3 included; aquatic habitat protection, human health
4 protection, which is for fish consumption, and whole-body
5 contact recreation under Category B, and secondary
6 recreation.

7 Twenty-five lakes that are maintained on the
8 site-specific criteria for nutrients in Table M of the Code
9 of State Regulations; eleven of these lakes were assessed
10 as having nutrient impairments.

11 Six of the most common pollutants on the list
12 include: 125 listings for bacteria, 92 for heavy metals in
13 water or sediment, 73 for low dissolved oxygen, 62 for
14 mercury in fish tissue, 21 for biological impairments based
15 on bio-monitoring, and 20 for chloride.

16 Five of the most common sources were: mining
17 and smelting, which was 96, 87 due to unknown, 86 for rural
18 nonpoint source, 73 for urban runoff, and 62 due to
19 atmospheric deposition.

20 A summary of the proposed waters for
21 delisting. A total of 29 waterbody pollutant pairs from
22 the 2014 303(d) List are being proposed for de-listing. Of
23 the 29 proposed for delisting, 24 now meet water quality
24 standards; three due to being originally listed in error,
25 and one due to wastewater facility update, and two are

1 being delisted for re-segmentation of a waterbody or the
2 assessment method had changed.

3 Again, the purpose of today's hearing is to
4 introduce the draft 2016 303(d) list of impaired waters and
5 allow the public to provide comments. The Department
6 request the Commission's approval of the document at the
7 April Commission meeting. And that's all I have.

8 COMMISSIONER PARNELL: Thank you, Trish.

9 MS. RIELLY: I'm sorry, one more thing.
10 Information that's available on the Department's website is
11 the draft 2016 303(d) List and the assessment worksheet, a
12 list of the waters on the 2014 303(d) List that are being
13 proposed for removal on the 2016 list, along with the
14 corresponding assessment worksheets, and a summary of the
15 public availability meeting discussions that were held on
16 November 3rd and December 1st of 2015. That's it.

17 COMMISSIONER PARNELL: Thank you.

18 MS. RIELLY: Thank you.

19 CHAIRMAN PARNELL: Commissioners, do you have
20 any questions at this point?

21 COMMISSIONER BENNETT: Yes, I would have a
22 question maybe more directed maybe at John. You referenced
23 going to the website to find this information. Those of us
24 that are not as qualified to browse a website to try to
25 find issues like this is mind boggling. So could we get an

1 e-mail from you that tells us where that is on the website,
2 John?

3 MR. MADRAS: Absolutely. Sure.

4 COMMISSIONER BENNETT: We would appreciate it
5 because I have searched and searched and sometimes I end up
6 in Thailand. Appreciate it.

7 CHAIRMAN PARNELL: Thanks, Trish. Comments
8 from the floor, Leslie Holloway representing the Missouri
9 Farm Bureau.

10 MS. HOLLOWAY: Good morning and happy New
11 Year. Leslie Holloway representing Missouri Farm Bureau.
12 I would like to first give you all a handout before I
13 actually make my comments.

14 Following up on the overview that Trish just
15 gave and having participated in some of the public
16 discussions, the public meetings that she referenced, I
17 thought that I would like to just share with you some
18 information about some of the specific waterbodies that
19 we've discussed and why some of those came to my attention
20 and others. But kind of following up on Commissioner
21 Bennett's comment about the finding information on the
22 website sometimes can be difficult and it's definitely time
23 consuming if you want to try to go through, you know, each
24 of these worksheets. So what you have are copies of the
25 worksheets from just a few of these waterbodies to give you

1 an example of what some of us have been talking with the
2 Department about.

3 The first one, Barker Creek, the discussion
4 that we've had there pertaining to the dissolved oxygen
5 impairment. What struck me about that particular waterbody
6 is the data is from between 2001 and 2007 on dissolved
7 oxygen. There are -- there were eight samples where there
8 were exceedances where that standard was not met out of 22.
9 Now, over the course of -- you know, that's over the course
10 of six years -- eight exceedances; six of out of those
11 eight were samples that were done in June, two out of those
12 eight were done in October. So, my question has been to
13 DNR staff about, you know, how do you look at the timing?
14 What's the protocol of the timing of the sampling? As well
15 as the age of the data. And the methodology says that if
16 the department uses data to make a list decision that
17 predates the date the list is initially developed by more
18 than seven years, the Department will provide a written
19 justification for the use of data. So I have asked the
20 Department about how they plan to handle that. It's my
21 understanding that there will be some additional written
22 explanation of using that kind of data.

23 In the proposed methodology, there is also
24 some discussion of dissolved oxygen and a footnote that
25 would apply to the proposed methodology pertaining to

1 dissolved oxygen that indicates that I guess some seasonal
2 sampling protocols need to be applied in some cases. I
3 don't know if this is one of those cases, but that's one of
4 the things that I'll discuss further with the Department
5 staff.

6 I would like to move then to the second
7 worksheet, which pertains to Horse Creek. And there are
8 two different pollutants there for which Horse Creek is
9 evaluated. One being the aquatic invertebrate monitoring,
10 and then the second being dissolved oxygen. But the
11 macro-invertebrate sampling, this is not a newly listed
12 waterbody, but the question that I have is if you look at
13 the dates there on the data; 1995, 2000, 2006, and 2007.
14 So again, questions about the age of the data and also
15 relative to the numbers of samples that, you know, were
16 taken upon which that listing is based. The dissolved
17 oxygen sampling also is kind of a unique situation,
18 although I think there some other waterbodies with similar
19 data sheets. But the sampling, as you can see, they've --
20 there are three time periods for sampling that are listed
21 on the dissolved oxygen. Samples taken from 2000 to 2004
22 where two out of eight of those samples showed exceedances.
23 And then the second listing, as you can see, says
24 August 28, 2006, September 1, 2006; so that's over a course
25 of five days where there are 392 samples listed. And then

1 the final sampling period, 2007 to 2011, where you have 17
2 samples and no exceedances in that time period. So those
3 raised questions in my mind relative to the sampling
4 protocol and how those -- how those are handled.

5 COMMISSIONER BENNETT: Question, Leslie, on
6 that. Pardon me. The -- on the left-hand of that column
7 you have the origin I suppose MDNR and MEC that did the 392
8 samples. Who is MEC?

9 MS. HOLLOWAY: I am not sure. I'm sure that
10 staff can provide that information.

11 MR. VOSS: Midwest Environmental Consultants.

12 MS. HOLLOWAY: All right. Then -- were there
13 other questions on that? Okay. Then I would like to move
14 on to the Dry Hollow, which is the next worksheet. This is
15 a new listing and looking at -- new listing for bacteria.
16 So looking at the age of the data here, we have samples
17 from 2007, 2010, and 2011. If there is an exceedance
18 underlined on the worksheet at the bottom there, the
19 narrative, last three years of available data, 2011, 2010,
20 2007 the criteria was exceeded. But if you look at where
21 the criteria was exceeded it was in 2007, not in 2010 or
22 2011, the more recent data.

23 Looking then at the next worksheets, there are
24 a couple of worksheets there pertaining to waterbodies
25 listed for mercury; Buffalo Bill Lake and Cottontail Lake,

1 just as examples of some of those. There are 42 that were
2 already listed and then 20 that are being added under the
3 proposed list. The worksheets reference a study by
4 Department of Conservation and there is an asterisk by the
5 description of that information there, "Sport-caught Fish
6 Consumption In Missouri 2002 Male Survey" talking about
7 found that Missourians eat sport-caught fish mixture of
8 species. This data is not in a publicly available format
9 at this point. I understand from the Department of
10 Conservation that it will be available shortly. But when
11 the proposed listing came out, I requested a copy of that
12 and it was not publicly available at the time. They were
13 in the process of putting it into final form. The
14 narrative on that worksheet then at the next asterisk talks
15 about that the value exceeds the federal criteria of .3.
16 Additionally the fish consumption rate for Missourians that
17 eat sport-caught fish is much greater than the fish
18 consumption estimate used for the federal criteria and
19 therefore this waterbody is judged to be impaired by
20 mercury and fish tissue. Now, from the discussions in the
21 public meeting it's my understanding that this waterbody
22 would be listed regardless of the information from
23 Department of Conservation. So I am under the impression
24 then that no listing decisions have actually been made
25 based on any of the Department of Conversation information

1 solely at this point in time. So the fact that that
2 information is not publicly available has not resulted --
3 is not as, I guess troublesome, because there hasn't been a
4 listing based simply on the conservation data yet, but that
5 is something that we would certainly want to see made
6 publicly available. And on Cottontail, similar narrative,
7 same description of the Department of Conservation data.
8 And the narrative below where the second asterisk is, is
9 slightly different. Some of the waterbodies listed for
10 mercury are one way and some of them are the other way.
11 But this particular narrative says that this value is
12 greater than the federal criteria, therefore this lake is
13 judged to be impaired by mercury. However, the fish
14 consumption rate for Missourians that eat sport-caught fish
15 is much greater than fish consumption estimate used for the
16 federal criteria, therefore mercury is still considered to
17 be a contaminant of concern in this lake.

18 That's a little bit, I think, confusing. I
19 mean mercury, I guess, would be a concern if it's listed as
20 an impairment. So I'm not sure however it's still
21 considered a contaminant of concern refers to in addition
22 to the fact that it's already listed as impaired.

23 Then I would like to go to one last worksheet
24 and that's for Crane Lake, which is newly listed
25 site-specific criteria. The samples are 1997 through 2009

1 and there are four samples per year. My question, I guess,
2 in part was why would this be listed now? And in some
3 cases apparently there is a lag in data that causes a
4 waterbody to be impaired. The data may be older than the
5 current year, but if for whatever reason it hasn't come up
6 in what I understand to be the rotation of analysis or
7 whatever would prompt the analysis evaluation for that
8 year, it might not be listed for another couple of years.
9 But looking at this particular waterbody it appears -- and
10 I mean just as a very cursory, you know review -- if you
11 look at averages for instance for phosphorous and
12 chlorophyll, which is what the basis of the listing is in
13 this case, the number appear to be improving through that
14 time period. If you go from each year looking at averages.
15 I just looked at averages just as a rough means. And so it
16 would seem to me that there needs to be some more recent
17 evaluation of what's going on in that lake before it would
18 be added to the list as it was this year.

19 So that really concludes the information I
20 wanted to present to you. I think just as an overall kind
21 of, you know, statement that I think is important for us,
22 or for anybody who is talking about this information
23 publicly, is to be able to help people understand that the
24 fact that there were 75 new listings, you know, this year;
25 you can't conclude then that there are 75 waterbodies that

1 are worse off this year than they were last year this time
2 around because there is a lag in the data. There are
3 changes in standards, and there are some listings that are
4 actually adding an impairment this time around that was not
5 listed. So, in other words, a water body that was already
6 on the list for something, dissolved oxygen or whatever,
7 there might have been an addition of another pollutant for
8 that same water body that would be also be considered a new
9 listing. So I would be happy to answer any questions?

10 COMMISSIONER BENNETT: I have a question.
11 Crane Lake is that in Crane, Missouri?

12 MS. HOLLOWAY: I can't say where the location
13 is. All I did was look at worksheets and I am not familiar
14 enough with these waterbodies to comment further.

15 COMMISSIONER BENNETT: This leads to my
16 question: Are there any of these impaired waters that are
17 used for drinking water supplies?

18 COMMISSIONER LEAKE: Then the answer to that
19 is yes. Mark Twain Lake is a drinking water supply list.

20 MR. VOSS: I'm Robert Voss, I work under
21 Trish. There is an additional column on the 303(d) List of
22 other uses. There is a column for the impaired list and
23 other uses. In that column of other uses, there should be
24 a "DWS" for drinking water supply if it's used for drinking
25 water supply.

1 COMMISSIONER BENNETT: Thank you.

2 CHAIRMAN PARNELL: Thank you. Any other
3 questions of Leslie? Leslie, I have a question, a general
4 one, is the point of sharing this information, the last two
5 sentences you said or have you asked for specific responses
6 to each of these from the Department?

7 MS. HOLLOWAY: Yes, I have asked -- or had
8 discussions I should say with the Department -- and in some
9 cases there have been responses or explanations, for
10 instance, of the lag in the data and that's why we are
11 listing it now. So it's not that there was necessarily a
12 change in the standard, but it's just that there is a lag
13 time in getting through some of the data that's submitted
14 depending on when it's submitted and that kind of thing.
15 So I guess in combination, I'm wanting to share that
16 information so that you have a better feel for what's in
17 the summaries of the public discussions that you have.

18 CHAIRMAN PARNELL: I think our concern was
19 just to make sure that the Department is responding to you
20 on a timely basis.

21 MS. HOLLOWAY: Yes. I would say yes. In
22 fact, I would commend the Department on being very open
23 with information and willing to discuss it.

24 CHAIRMAN PARNELL: Thank you.

25 MS. HOLLOWAY: Thank you.

1 CHAIRMAN PARNELL: Anybody else? Any other
2 comments on this section, this agenda item? Okay. I have
3 a closing statement I will read. The Commission will
4 accept comments on the proposed document until 5:00 p.m.
5 January 31, 2016. Comments can be submitted to the
6 Department's Water Protection Program by mail to the
7 Department's Water Protection Program, Attention: Trish
8 Rielly, P.O. Box 176, Jefferson City, 65102-0176, e-mail
9 directly to trish.rielly@dnr.mo.gov, hand-delivered to the
10 receptionist at the Lewis and Clark State Office Building,
11 1101 Riverside Drive in Jefferson City, mark comments with
12 "Attention to Trish Rielly, Water Protection Program."

13 On behalf of the Commission, I thank everyone
14 who has participated in this process and this hearing is
15 now closed.

16 (Hearing concluded at 10:24 a.m.)

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CERTIFICATE OF REPORTER

STATE OF MISSOURI)

) ss.

COUNTY OF COLE)

I, Jenna Petree, do hereby certify that the witness whose testimony appears in the foregoing deposition was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Court Reporter

<p style="text-align: center;">A</p> <p>ability 17:6 able 13:23 Absolutely 7:3 accept 16:4 Act 3:16 action 2:24 17:9 17:13 added 11:2 13:18 adding 14:4 addition 12:21 14:7 additional 8:21 14:21 Additionally 11:16 adequate 3:19 administrative 4:16 age 8:15 9:14 10:16 Agency 3:19 agenda 16:2 allow 6:5 analysis 13:6,7 answer 14:9,18 anybody 13:22 16:1 apparently 13:3 appear 13:13 appears 13:9 17:5 applied 9:2 apply 8:25 appreciate 7:4,6 appropriate 2:23 approval 6:6 approved 3:22 4:23 April 2:24 6:7 aquatic 5:3 9:9 Ashley 1:14 asked 8:19 15:5,7 assess 3:23 assessed 4:25 5:2 5:9</p>	<p>assessment 3:11 6:2,11,14 asterisk 11:4,14 12:8 atmospheric 5:19 attendance 2:15 2:17 attendees 4:7 attention 7:19 16:7,12 attorney 17:11 August 9:24 availability 4:5 6:15 available 4:17 6:10 10:19 11:8 11:10,12 12:2,6 averages 13:11 13:14,15 a.m 16:16</p> <p style="text-align: center;">B</p> <p>B 5:5 bacteria 5:12 10:15 Barker 8:3 based 5:14 9:16 11:25 12:4 basis 13:12 15:20 behalf 16:13 Bennett 1:12 6:21 7:4 10:5 14:10,15 15:1 Bennett's 7:21 best 17:6 better 15:16 biennially 3:17 Bill 10:25 biological 5:14 bio-monitoring 5:15 bit 12:18 Bluffs 1:18 body 14:5,8 bogging 6:25</p>	<p>Boone 4:12 bottom 10:18 Box 16:8 Broadway 1:18 browse 6:24 Buddy 1:12 Buffalo 10:25 Building 1:8 16:10 Bureau 7:9,11</p> <p style="text-align: center;">C</p> <p>call 3:8 card 2:15 carried 4:22 case 13:13 cases 9:2,3 13:3 15:9 Category 5:5 causes 13:3 certainly 12:5 CERTIFICATE 17:1 certify 17:4 Chair 1:12,12 CHAIRMAN 2:2 3:7 6:19 7:7 15:2,18,24 16:1 change 15:12 changed 6:2 changes 14:3 chloride 5:15 chlorophyll 13:12 City 1:9 4:11 16:8,11 Clark 1:8 16:10 classification 4:25 CLEAN 1:1 closed 16:15 closing 16:3 Code 5:8 COLE 17:3 Columbia 1:18 column 10:6</p>	<p>14:21,22,23 combination 15:15 come 2:18 13:5 Comley 4:12 commend 15:22 comment 2:7,14 3:3,15 7:21 14:14 commenting 2:10 comments 2:11 4:10,11,13,14 4:15 6:5 7:7,13 16:2,4,5,11 Commission 1:1 1:14 2:2,9,12 2:13,22,24 3:22 6:7 16:3,13 Commissioner 1:13,13,14 6:8 6:17,21 7:4,20 10:5 14:10,15 14:18 15:1 Commissioners 3:9 6:19 Commission's 6:6 common 5:11,16 complete 2:16 composed 4:20 concern 12:17,19 12:21 15:18 conclude 13:25 concluded 16:16 concludes 13:19 confusing 12:18 conservation 11:4,10,23 12:4 12:7 considered 12:16 12:21 14:8 Consultants 10:11 consuming 7:23 consumption 5:4 11:6,16,18</p>	<p>12:14,15 contact 5:5 contaminant 12:17,21 continue 4:13 continues 3:25 4:2 Control 3:16 controls 3:20 Conversation 11:25 copies 7:24 copy 11:11 corresponding 6:14 Cottontail 10:25 12:6 counsel 17:8,11 County 4:12 17:3 couple 10:24 13:8 course 8:9,9 9:24 court 1:16 2:20 3:1 17:16 Cowherd 1:13 Crane 12:24 14:11,11 Creek 8:3 9:7,8 criteria 5:8 10:20 10:21 11:15,18 12:12,16,25 current 13:5 currently 3:14 cursor 13:10</p> <p style="text-align: center;">D</p> <p>data 8:6,15,16,19 8:22 9:13,14,19 10:16,19,22 11:8 12:4,7 13:3,4 14:2 15:10,13 Dataset 5:1 date 4:9 8:17 dates 9:13 days 9:25</p>
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