

**DRAFT**  
**MISSOURI CLEAN WATER COMMISSION MEETING**

**Department of Natural Resources**  
**East Elm Street Conference Center**  
**Bennett Springs/Roaring River Conference Rooms**  
**1730 East Elm Street**  
**Jefferson City, Missouri**

**September 8, 2010**

**MINUTES**

Present

Ron Hardecke, Chair, Missouri Clean Water Commission  
Todd Parnell, Commissioner, Missouri Clean Water Commission  
Jan Tupper, Commissioner, Missouri Clean Water Commission  
William A. Easley, Jr., Missouri Clean Water Commission  
Scott B. Totten, Acting Director of Staff, Missouri Clean Water Commission  
Jennifer Frazier, Counsel, Missouri Clean Water Commission  
Malinda Steenbergen, Secretary, Missouri Clean Water Commission

Stacey Armstrong, Watershed Committee of the Ozarks, Springfield, Missouri  
Melissa Bagley, Environmental Protection Agency, Kansas City, Kansas  
Dorris Bender, Water Pollution Control, Independence, Missouri  
Joe Boland, Department of Natural Resources, Jefferson City, Missouri  
Georganne Bowman, Boone County, Jefferson City, Missouri  
Andy Brashear, Simmons Foods, Joy, Oklahoma  
Bob Bromley, Empire District Electric Company, Joplin, Missouri  
Robert Brundage, Newman, Comley & Ruth P.C., Jefferson City, Missouri  
Rich Burdge, Department of Natural Resources, Jefferson City, Missouri  
Brittany Burrientos, Newman, Comley and Ruth, Jefferson City, Missouri  
Mary Campbell, Empire District Electric, Carl Junction, Missouri  
John Carter, Rolla, Missouri  
Erica Cox, Project WET, Springfield, Missouri  
Lorin R. Crandell, Missouri Coalition for the Environment, St. Louis, Missouri  
Allen Decker, Missouri Rural Water Association, Gray Summit, Missouri  
John DeLashmit, Environmental Protection Agency, Kansas City, Kansas  
Adam Dorrell, Benton & Associates, Kirksville, Missouri  
Tim Duggan, Attorney General's Office, Jefferson City, Missouri  
Joe Earney, Simmons Foods, Siloam Springs, Arkansas  
John R. Elrod, Simmons Foods, Fayetteville, Arkansas  
Deborah Frank, Missouri Botanical Garden, St. Louis, Missouri  
Tiffany Frey, James River Basin Partnership, Springfield, Missouri  
John Ford, Department of Natural Resources, Jefferson City, Missouri

Ed Galbraith, Barr Engineering, Jefferson City, Missouri  
Carol Garey, Department of Natural Resources, Jefferson City, Missouri  
Doug Garrett, Department of Natural Resources, Jefferson City, Missouri  
Curt Gateley, Department of Natural Resources, Jefferson City, Missouri  
Ross Henson, Washington, Missouri  
John Hoke, Department of Natural Resources, Jefferson City, Missouri  
Leslie Holloway, Missouri Farm Bureau, Jefferson City, Missouri  
Hans Holmberg, Limno Tech, Hudson, Wisconsin  
Caroline Ishide, Missouri Coalition for the Government, St. Louis, Missouri  
Ted Koenig, Department of Natural Resources, Jefferson City, Missouri  
Mike Kruse, Department of Natural Resources, Jefferson City, Missouri  
Carrie Lamb, City of Springfield, Springfield, Missouri  
John Lodderhose, Metropolitan St. Louis Sewer District, St. Louis, Missouri  
Randy Lyman, City of Springfield, Springfield, Missouri  
Emily Lyon, Department of Natural Resources, Jefferson City, Missouri  
John Madras, Department of Natural Resources, Jefferson City, Missouri  
Jack McManus, Attorney General's Office, Jefferson City, Missouri  
Leasue Meyers, Department of Natural Resources, Jefferson City, Missouri  
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri  
Rob Morrison, Barr Engineering, Jefferson City, Missouri  
Leanne Tippet Mosby, Department of Natural Resources, Jefferson City, Missouri  
Gary Mursky, Simmons Foods, Siloam Springs, Arkansas  
Terry Nelson, Department of Natural Resources, Jefferson City, Missouri  
Kevin Perry, REGFORM, Jefferson City, Missouri  
Mike Pessina, HDR, Springfield, Missouri  
Mike Ray, City of Branson, Branson, Missouri  
John Reece, Little Blue Valley Sewer District, Independence, Missouri  
John Rustige, Department of Natural Resources, Jefferson City, Missouri  
Ted Salveter, City Utilities, Springfield, Missouri  
Terry Satterlee, Shook, Hardy & Baer, Kansas City, Missouri  
Candy Schilling, ERC, Jefferson City, Missouri  
Kevin C. Smith, Department of Natural Resources, Jefferson City, Missouri  
Darrick Steen, Department of Natural Resources, Jefferson City, Missouri  
Trent Stober, Geosyntec-MEC Water Resources, Columbia, Missouri  
Kavan L. Stull, Empire District Electric, Joplin, Missouri  
Donna Swall, Lake of the Ozarks Watershed Alliance, Sunrise Beach, Missouri  
Steve Townley, EIERA, Jefferson City, Missouri  
Rebecca Townsend, Missouri News Horizon, Jefferson City, Missouri  
Roger Walker, REGFORM, Jefferson City, Missouri  
Phil Walsack, MPUA, Columbia, Missouri  
Mary West, Jacobs Engineering, St. Louis, Missouri  
Bill Whipps, Department of Natural Resources, Jefferson City, Missouri  
Karla Wilson, Eco Works Unlimited, St. Louis, Missouri  
Warren Witt, Ameren/LOWA, Lake Ozark, Missouri  
Gene Woods, Simmons, Southwest City, Missouri  
Mike Zimmerman, HDR, Taney County, Springfield, Missouri

DRAFT

1                   BEFORE THE CLEAN WATER COMMISSION  
2                   DEPARTMENT OF NATURAL RESOURCES  
3                   STATE OF MISSOURI

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MEETING OF:

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SEPTEMBER 8, 2010

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CONDUCTED BY:

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CHAIRMAN RON HARDECKE

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18   TRANSCRIBED FROM AUDIO BY:

19   DANIELLE Y. MOSER

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21   3432 WEST TRUMAN BOULEVARD

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## 1 P R O C E E D I N G S

2 CHAIRMAN HARDECKE: I'm Ron Hardecke from Owensville.  
3 We have Jan Tupper, Commissioner from Joplin and Todd  
4 Parnell, Commissioner from Springfield, Bill Easley Commissioner  
5 from Cassville, Malinda Steenbergen, secretary to the Commission.  
6 Jenny Frazier the legal counsel to the Commission from the  
7 Attorney General's Office and Scott Totten is the  
8 acting director for the Commission and the Water  
9 Program.

10 So we'll begin with **Tab No. 1** the minutes; are  
11 there any corrections or additions to the minutes?

12 COMMISSIONER TUPPER: **Mr. Chairman, I move the**  
13 **minutes be approved.**

14 COMMISSIONER PARNELL: **Second.**

15 CHAIRMAN HARDECKE: **Malinda, take the vote, please.**

16 MS. MALINDA STEENBERGEN: **Commissioner Easley?**

17 COMMISSIONER EASLEY: **Abstain.**

18 MS. MALINDA STEENBERGEN: **Commissioner Tupper?**

19 COMMISSIONER TUPPER: **Yes.**

20 MS. MALINDA STEENBERGEN: **Commissioner Parnell?**

21 COMMISSIONER PARNELL: **Yes.**

22 MS. MALINDA STEENBERGEN: **Chair Hardecke?**

23 CHAIRMAN HARDECKE: **Yes.**

24 Okay. Thank you. We'll move on to **Tab No. 2.**

25 It's a **presentation of the 2010 303(d) List**, John

1 Ford.

2 MR. JOHN FORD: Good morning, Mr. Chairman,  
3 Commissioners. My name is John Ford. I work in the  
4 monitoring assessment unit of the Water Pollution  
5 Control Branch and I'm here this morning to ask for  
6 approval of the 303(d) List.

7 The Department (inaudible) through the Water  
8 Pollution Control Act Section 303(d) requires states  
9 to bi-annually submit a list of impaired waters to the  
10 Environmental Protection Agency.

11 When the Commission approved the 2010 listing  
12 methodology document on May 6th of 2009, the  
13 Department developed and internally reviewed a  
14 proposed list in February of this year. This list was  
15 place on public notice from February 24th until July  
16 28th, 2010. As a result of comments received during  
17 the public notice period and because EPA had approved  
18 some TMDL studies since the public notice period  
19 began, today's list shown as Table 1, it is on Page  
20 227 of your packet, I believe, removed 38 water body  
21 pollutant pairs from the public notice list.

22 Most of these 38 waters shown in Table 2 on  
23 Page 237 of your packet were removed due to either  
24 the completion of TMDLs in 18 cases or because  
25 recent data shows that the water body is no longer

1 impaired by the pollutant, which was in 16 cases.

2       There are four water body pollutant pairs on  
3 today's list that have been added to the February  
4 24th, public notice list. These are Wilson's Creek in  
5 Greene County, due to bacteria; Kiefer Creek in St.  
6 Louis County, due to bacteria; a trib to Old Mines  
7 Creek in Washington County where there's excessive  
8 sediment deposition due to abandoned barite  
9 pond and nitrogen was added as a  
10 pollutant to Manito Lake in Moniteau County, which is  
11 already on the public notice list for phosphorus.

12       Today's list adds 126 water body pollutant pairs  
13 to the 2008 list. Promulgation of nutrient criteria  
14 for lakes in the State Water Quality Standards in  
15 2009 resulted in 55 of these new listings. There  
16 were 29 new listing for low dissolved oxygen and 20  
17 for bacteria.

18       Today's list proposes to remove 45 water body  
19 pollutant pairs from the 2008 list. These waters  
20 are included as Table 3, which is on Page 239 of your  
21 packet.

22       Approved TMDLs since the approval of the 2008  
23 list account for 21 of these proposed delistings and 21 are  
24 based on data indicating the waters are no longer  
25 impaired by these pollutants. Three public meetings

1 on the proposed list were held during the public  
2 notice period. A total of three members of the  
3 public attended these meetings and minutes are  
4 attached as part of the administrative record,  
5 Attachment One.

6 The administrative record also includes all  
7 written comments received to date and during the  
8 public notice period. This administrative  
9 record is shown on Pages 241 through 386 of your  
10 packet.

11 The Department received several letters  
12 providing comments on the proposed list. These  
13 letters and the Department's response are included in  
14 this administrative record. I would like to  
15 provide you a brief summary of public comments and  
16 our response.

17 Two comments were received on water quality --  
18 on quality assurance documents. One of these noted  
19 the long length of time needed for the Department to  
20 provide some of the data and both suggested that  
21 quality assurance information should be provided free  
22 of charge. Our response was that we can supply  
23 existing electronic QA documents quickly and free of  
24 charge, but for requests that require considerable  
25 staff time to compile and copy, we need

1 to be able to reclaim our costs.

2 We received one comment suggesting that  
3 dissolved oxygen be removed as a 303(d) pollutant since  
4 it was an inherent condition of the water rather than  
5 a pollutant. The Department's response was that  
6 we agreed in principle and such an action would reduce  
7 our workload but that we held little hope that EPA  
8 would agree with is. However, the Department will  
9 broach this subject with EPA.

10 (Please note at this time an audio malfunction interrupted  
11 the recording of the meeting, and therefore this transcript.)

12

13 **[A copy of the Public Comments and Department Response portion of**  
14 **John Ford's presentation and a summary of Robert Brundage of**  
15 **Newman, Comley and Ruth's comments and Department's response are**  
16 **being inserted into the minutes due to the audio malfunction.]**

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There were three comments on the listing of streams impaired by lead mining. The first was that some of the data used by the Department appeared to be in the mixing zone and was therefore inappropriate for assessing chronic criteria. The Department checked the location of this data and did eliminate some samples and re-assessed this water body, resulting in the removal of nickel as a pollutant from one stream.

The second comment suggested the sediment quality guidelines in the current Listing Methodology Document (LMD) may be inappropriate based on a recent study in the Joplin area. The Department responded that it must follow the current LMD, but is willing to review the results of this new study as part of the revision of the next LMD.

A third comment questioned the use of toxicity and invertebrate data in assessing streams where this data did not appear to conclusively demonstrate impairment. The Department response was that when waters are listed for narrative criteria concerns, the LMD requires us to use a "weight of evidence" approach to assessing data which includes display of any applicable chemical, physical or biological data. Some of this data, standing on its own, may not conclusively show impairment, but it provides the Commission and the public information on exactly what kind of data was available and used in this "weight of evidence" approach.

Five comments were received on St. Louis area streams. The first was that the list should include virtually all small urban streams in the St. Louis area since they all shared the same kind of problems. The Department responded that it agrees in principle with this comment, but that the LMD requires us to list only those streams for which water quality data is available.

A second comment requested the addition of Kiefer Creek to the list and provided data not previously reviewed by the Department. The Department reviewed this data and subsequently added Kiefer Creek to the proposed list for bacteria.

A third comment questioned why some chloride data on Maline Creek did not result in listing that pollutant. The Department's response was that the samples in question were collected during a storm event and that the LMD explicitly

eliminates samples collected under those conditions from consideration of chronic criteria exceedences.

A fourth comment questioned our proposed de-listing of a portion of Dardenne Creek. The Department responded that we believed the commenter had misread the information we presented and that upon re-reading our information sheet for Dardenne Creek would withdraw the comment.

A fifth comment questioned the proposed de-listing of Peruque Creek. The Department responded that both fine sediment deposition data and aquatic invertebrate data did not indicate impairment and therefore there was no justification for such a listing.

Three comments were received regarding lakes on the proposed list. The first opposed the proposed de-listing of Lewistown Lake for atrazine. The Department noted that finished water data and information on the city's very limited use of activated charcoal during the 1990s was good evidence that raw water atrazine levels met the state standard.

A second comment opposed the listing of three lakes with strict site specific nutrient criteria. The Department response was that we must follow the existing water quality standards and LMD in developing our list. We did suggest that in the next revision of the LMD, we could discuss changing our statistical methods for evaluating lakes where these stringent site specific criteria apply.

A third comment, received from two sources, noted that the Department had erred in calculating the nutrient criteria for some lakes. The Department agreed. We recalculated the criteria and reassessed the data for these lakes, which resulted in removal of several lakes from the list and changes in the pollutants ascribed to some lakes that remain on the list.

One comment questioned why the most recent bacteria data used to assess Wilson Creek was from 2007 and that the Department had not assessed the data against the losing stream E. coli criterion. The Department response was that we used all the available data at the time the assessment was made. The Department agreed that we had overlooked the one mile losing stream section and reassessed

the data using the losing stream criteria. This resulted in the addition of bacteria as a pollutant to one mile of Wilson Creek on the proposed list.

The final comment we received requested retaining Tributary to Wolf Creek in Madison County on the list for dissolved oxygen. The Department's response was that we believed the original listing was in error since only three dissolved oxygen measurements have been made on this stream in the last 25 years. The Department noted that it would make collection of additional data on this stream a high priority.

Summary of Robert Brundage of Newman, Comley and Ruth's Comments and  
Department's response:

Robert Brundage of Newman, Comley and Ruth, PC expressed concern that the Department was not adequately displaying or making available, laboratory quality assurance information on the data used to make 303(d) list decisions. Chris Boldt, the head chemist in the Department's lab explained the rigorous quality assurance procedures the lab follows and the results of all of the quality assurance testing that are contained within the lab LIMS database. Accepted standards for writing quality assurance reports include four different levels of detail. The Department's lab does not produce written reports on quality assurance because those require additional manpower and cost. Additional resources would be needed to be able to provide these reports.

1 [The presentation given by Hans Holmberg of Limno Tech is being  
2 inserted into the minutes at this point due to  
3 audio malfunction.]

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## Data Quality Review of Draft 2010 303(d) List

September 8, 2010




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### Data Provided at Public Notice

#### List of Impaired Waters

Year	Waterbody Name	WBD	Ca L Site	WQ Site	Unit	Pollutant
2010	Big Cr.	2916	P 3.0	752.0	MA	Cadmium (S)
2010	Big Cr.	2916	P 3.0	752.0	MA	Lead (S)
2010	Big Cr.	2916	P 3.0	752.0	MA	Manganese (S)

↓  
Data Supporting Determination

Missouri Department of Natural Resources  
Big Creek - WBID 2916  
Sediment Chemistry, 1994-2007  
Data is in mg/kg, except HG (µg/g)

ORG	SITE	DATE	SITE NAME	CO	CD	BN	IS	PH	ZN
MOHR	291628.5	20070223	Big Cr. B. Glover sampler		80.2	1800	42.3		
MOHR	291628.5	20080519	Big Cr. B. Glover sampler		41.6	1425	31.8		
MOHR	291628.5	20041020	Big Cr. 2 mi N. Glover sampler		17.2	371	17		271
Mean					39.0				568
Probable Effect Level				4.88		68.6	128		439

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### Data Provided at Public Notice

There's a story behind each of these numbers.

#### Data Supporting Determination

Missouri Department of Natural Resources  
Big Creek - WBID 2916  
Sediment Chemistry, 1994-2007  
Data is in mg/kg, except HG (µg/g)

ORG	SITE	DATE	SITE NAME	CO	CD	BN	IS	PH	ZN
MOHR	291628.5	20070223	Big Cr. B. Glover sampler		80.2	1800	42.3		
MOHR	291628.5	20080519	Big Cr. B. Glover sampler		41.6	1425	31.8		
MOHR	291628.5	20041020	Big Cr. 2 mi N. Glover sampler		17.2	371	17		271
Mean					39.0				568
Probable Effect Level				4.88		68.6	128		439

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### It starts with a Plan.

- Quality Assurance Project Plan (QAPP)
  - Project Management – Why? Who?
  - Sampling Design – What? Where? When?
  - Sampling and Analytical Methods – How?
  - Data Validation and Usability – How will we know the data is acceptable?

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### The Plan gets implemented.

Sampling



Sample Labeling

MD Dept. of Natural Resources  
Div. of Environmental Quality

Barcode: 

Date: \_\_\_\_\_  
Time: \_\_\_\_\_ Sample #: **0223619**

Disinfection: None UV Cl<sub>2</sub> Other: \_\_\_\_\_

Preservative: NaOH H<sub>2</sub>SO<sub>4</sub> HNO<sub>3</sub>  
Na<sub>2</sub>S<sub>2</sub>O<sub>3</sub> NH<sub>4</sub>Cl None  
HCl Other: \_\_\_\_\_

Collector's Initials: \_\_\_\_\_ Sample Used? Yes No

From: Environmental Sample Collection, DNR Division of Environmental Quality, ESP

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### Samples go from field to laboratory with a chain-of-custody (COC).

MICHIGAN DEPARTMENT OF NATURAL RESOURCES  
FIELD SHEET AND CHAIN-OF-CUSTODY RECORD

Page 1 of 1      62

LABORATORY ORDER #: 070524025

Sample Information		Preservation		Chain of Custody	
Sample ID: <b>070609</b>	Site: <b>Tom's Pt. B. at G. C. C. R. &amp; M. A. B. in T. Z.</b>	Preservative: <b>NaOH</b>	Other: <b>None</b>	Collector: <b>Tom's Pt. B. at G. C. C. R. &amp; M. A. B. in T. Z.</b>	Time: <b>11:30</b>
Sample Name: <b>Seawater</b>	Location: <b>Seawater</b>	Container: <b>100 mL</b>	Volume: <b>100 mL</b>	Received by: <b>Tom's Pt. B. at G. C. C. R. &amp; M. A. B. in T. Z.</b>	Date: <b>09/08/10</b>
Sample A	Sample B	Sample C	Sample D	Sample E	Sample F

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The laboratory runs analyses and checks results and quality.



Laboratory quality assurance/quality control (QA/QC) report

Parameter	Units	Req. Limit	Lab. Result	Acceptance Limit	Outlier
Lead	µg/L	0.05	0.01	0.05	OK
Copper	µg/L	1.3	0.2	1.3	OK
Chromium	µg/L	0.1	0.05	0.1	OK
Vanadium	µg/L	5.0	0.5	5.0	OK
Barium	µg/L	1.0	0.5	1.0	OK
Strontium	µg/L	1.0	0.5	1.0	OK
Mercury	µg/L	0.01	0.005	0.01	OK
Thallium	µg/L	0.1	0.05	0.1	OK

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The laboratory reports results back to program.

Sample #: 07051405-09  
 Composite #: 6736099

Analysis Report

Parameter	Result	Units	Method	Lab. Code	Notes
Lead	0.01	µg/L	ICP-MS	201	OK
Copper	0.2	µg/L	ICP-MS	201	OK
Chromium	0.05	µg/L	ICP-MS	201	OK
Vanadium	0.5	µg/L	ICP-MS	201	OK
Barium	0.5	µg/L	ICP-MS	201	OK
Strontium	0.5	µg/L	ICP-MS	201	OK
Mercury	0.005	µg/L	ICP-MS	201	OK
Thallium	0.05	µg/L	ICP-MS	201	OK

Quality Assurance

- 11 Estimated value: Field analysis/spot
- 12 Laboratory quality
- 13 Estimated value, not result to a standard value
- 14 Estimated value, non-technique-specific sample
- 15 No Result - Partially Qualified Treatment
- 16 Not analyzed - related analyte not detected
- 17 Results in dry weight
- 18 Results pH is outside the acceptable range
- 19 Standard value
- 20 Not detected as reported value

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The program reviews results and uses to make impairment determinations.

Missouri Department of Natural Resources  
 Big Creek - WBD 2916  
 Sediment Chemistry, 1996-2007  
 Data is in mg/kg, except HQ (µg/kg)

ORG	SITE	DATE	SITENAME	CO	CO	MM	NI	PS	ZN
MOHR	2916/28	20070205	Big C. 8i Glover smaller	802	1800	423			
MOHR	2916/28	20080109	Big C. 8i Glover smaller	416	1425	309			
MOHR	2916/28	20040202	Big C. 2 mi S. Glover smaller	172	371	17			271
Stream				38.00	38.00	38.00			38.00
Probable Effect Level				4.88	48.6	128			459

List of Impaired Waters

Year	Waterbody Name	WBD	Class	Size	WB Size	Unltd Pollutant
2010	Big C.	2916	IP	3.0	32.0	ML Cadmium (S)
2010	Big C.	2916	IP	3.0	32.0	ML Lead (S)
2010	Big C.	2916	IP	3.0	32.0	ML Manganese (S)

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### Renewed Sunshine Data Requests

- Additional requests in July 2010 needed to put pieces together
  - Quality Assurance Project Plans (QAPPs)
    - necessary to provide project-specific QA/QC criteria for data quality assessment
  - Chains-of-Custody (COCs)
    - necessary to link field sample IDs and lab sample IDs
  - Lab sample reports
    - necessary to provide information linking sample results with lab QC data (field sample IDs, lab sample IDs, sample collection dates, sample analysis dates, lab QC qualifier codes)

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### Information Received from DNR

- July 14<sup>th</sup>: received QAPPs for recent sampling
- July 21<sup>st</sup>: received 33 COCs

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### Findings from review of available information

- Of 243 water samples, we can link only 66 to QA/QC data from laboratory
- Of 77 sediment samples, we can link only 7 sediment samples to QA/QC data from laboratory
- Bottom Line: Cannot conduct independent data quality assurance review

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### Conclusions

- Request listings withheld because data quality cannot be independently confirmed

Waterbody Name	WBID	Pollutant	County
Big Creek	2916	Cadmium (S)	Wayne/Iron
Big Creek	2916	Lead (S)	Wayne/Iron
Big Creek	2916	Metals (S)	Wayne/Iron
Crooked Creek	1928U-01	Copper (W)	Iron/Den
Indian Creek	1946	Zinc (W)	Washington
Strother Creek	2751	Lead (W)	Iron
Strother Creek	2751	Zinc (W)	Iron
West Fork Black River	2755	Cadmium (S)	Reynolds

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### Recommendations

- Improved transparency and efficiency for independent review:
  - Sample reports should contain all information needed to find associated QA/QC data in analytical batch reports
  - Field QA/QC data should be included
  - Sample and QA/QC data should be stored and linked in a database for efficient retrieval and dissemination
  - Consider providing all information for each data set (analytical batch) in one package
  - Data validation reports on an analytical batch basis would enhance data transparency and end-user data assessments

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### Questions

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### Sediment Quality Guidelines in Listing Methodology

- DNR uses levels based on study published in 2000
  - *Development and Evaluation of Consensus-Based Sediment Quality Guidelines for Freshwater Ecosystems*, MacDonald et al., Environmental Contamination Toxicology, Volume 39, Pages 20-31, 2000
- Concerns:
  - Represent sediment contaminated with multiple pollutants
  - Authors state the thresholds should be used along with other tools to inform decisions
  - Authors recognize the need for site-specific data

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### Recent information demonstrates concerns

- MacDonald et al., *Development and Evaluation of Sediment and Pore-Water Toxicity Thresholds to Support Sediment Quality Assessments in the Tri-State Mining District (TSMD), Missouri, Oklahoma, and Kansas, Draft Final Technical Report*, February 2009
- Sediment thresholds much higher than 2000 study: cadmium up 247%; lead up 71%; zinc up 542%
- These results indicate the need to develop thresholds on a site-specific basis

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1 MR. ROBERT BRUNDAGE: -- are we going to have two  
2 different standards here as one of the foundations to  
3 one of your decisions today?

4 MR. HANS HOLMBERG: The cost of bringing this  
5 information together has come up a couple of times.  
6 At the right time, at the right place compiling this  
7 information can be a very efficient process. At a  
8 time when it's all done in the past and it's in  
9 different peoples' hands it becomes a much more  
10 erroneous process and less efficient and as Mr. Ford  
11 mentioned the data that we're looking for is probably  
12 in a database somewhere at the lab and these things  
13 probably have been checked at some point, but they  
14 haven't been -- at that time they weren't put  
15 together and maintained with that data to the end of  
16 the process when they're actually being used.

17 So at the right point and right time, I think,  
18 this can be done with relatively little effort.

19 CHAIRMAN HARDECKE: I think it's fair for the  
20 regulated public to be able to -- would we need to  
21 provide verifiable data? I'd like to ask EPA how --  
22 how you evaluate the data from the State? Are there  
23 discrepancies or what's your process?

24 That's you, John.

25 MR. JOHN DeLASHMIT: Morning Commissioners. Good

1 morning, Mr. Chairman. I'm John DeLashmit. I'm  
2 chief of the water quality management branch at EPA's  
3 Region 7 Office in Kansas City.

4 We typically, even though, state's feel like we  
5 do get down in the weeds a lot when we review their  
6 303(d) list, this is one area that we haven't delved  
7 into looking at the data. But -- and when I hear  
8 Robert's presentation, I understand. I used to work  
9 in the waste programs, the clean-up programs and we  
10 were very strict about data validation, QAQC data  
11 quality that's all part of what you do, but one thing  
12 I would ask the folks of the data that you were able  
13 to look at; did you find any problems?

14 MR. HANS HOLMBERG: Well, we received a small  
15 proportion, percentage (inaudible) --

16 MR. JOHN DeLASHMIT: Right.

17 MR. HANS HOLMBERG: And then the last stage in the  
18 game so we haven't conducted what we would  
19 call a full data validation at this time.

20 MR. JOHN DeLASHMIT: 'Cause sometimes when we do this  
21 we may -- in the waste programs when we would do it I  
22 remember we would look at maybe 10 percent, 20  
23 percent of the data and check it to see and then if  
24 that was all good we would use that as an indicator  
25 that the rest of the data was good as well. We

1 didn't typically look at every piece of data. So  
2 that's what I was wondering is the things that they  
3 were able to look at, did they find problems? If  
4 they did that could be an indicator that maybe there  
5 were problems with the rest of the data as well.

6 CHAIRMAN HARDECKE: Right.

7 MR. JOHN DeLASHMIT: Did I answer the question?

8 CHAIRMAN HARDECKE: Yeah.

9 MR. JOHN DeLASHMIT: Thank you.

10 CHAIRMAN HARDECKE: I don't know if it's the direct-  
11 -- if it's the job of this Commission to set the --  
12 the data analysis for the Department. I think that's  
13 something we can look for in future list. Because I  
14 do believe it's very important for the regulated  
15 communities to feel comfortable with the quality of  
16 data.

17 I guess there's a lot dumped out here all at  
18 once to think about, so --

19 Any other comments?

20 (No response.)

21 CHAIRMAN HARDECKE: We have several more cards here  
22 to go through.

23 COMMISSIONER TUPPER: Proceed.

24 CHAIRMAN HARDECKE: Thanks, Robert, for your  
25 presentation and we'll give that consideration. John

1 Elrod?

2 MS. MALINDA STEENBERGEN: He's the person who spoke  
3 during the closed session so I think he changed it his mind.

4 CHAIRMAN HARDECKE: Okay. Trent Stober, did you wish  
5 to speak on this? You had a card for Number 2.

6 MR. TRENT STOBER: Okay. Thanks.

7 CHAIRMAN HARDECKE: Thank you.

8 MR. TRENT STOBER: Good morning, Chairman,  
9 Commissioners. My name is Trent Stober with  
10 Geosyntec Consultants in Columbia, Missouri. This  
11 morning I'd like to speak on behalf of the City of  
12 Springfield regarding a recent inclusion of Wilson's  
13 Creek for bacteria impairment for E. coli.  
14 I'd also like to recognize that Randy Lyman from the  
15 City is also present, today, if there's any questions  
16 for him as well.

17 Our concern with the listing is not as much with  
18 the -- the listing as it is with the sources  
19 indicated for the impairment. Although I would like  
20 to comment just generally on the way that losing  
21 stream bacteria data are -- are handled for 303(d)  
22 listings. And I think it warrants some  
23 review of that for the 2012 Water Quality Standards  
24 Review.

25 Essentially the -- the data were

1 evaluated in a different mechanism as we have for  
2 Whole Body Contact A criteria or Whole Body Contact A  
3 recreational uses. Our regulation set up that the --  
4 the whole body contact criteria of 126 E. coli per  
5 100 milliliters is applied as a geometric mean within  
6 Whole Body Contact A water bodies but in losing  
7 streams it's considered as a maximum value never to be  
8 exceeded, which is -- which is a fairly arduous task  
9 to meet in most streams.

10 With the -- with the 303(d) listing methodology  
11 Mr. Ford handled this as an evaluation of -- that  
12 only 10 percent bact- -- or 10 percent of the samples  
13 available could exceed that criteria without causing  
14 a 303(d) listing. So essentially 90 percent of the  
15 data had to be below the 126 E. coli criterion and  
16 with that there's no dispute that that ratio is  
17 exceeded in Wilson's Creek and I suspect that it's  
18 exceeded in many of our losing streams. The source  
19 of impairment that was identified included both point  
20 sources and urban nonpoint sources within the  
21 watershed.

22 So we were tasked with evaluating the discharge  
23 quality data from the city's southwest wastewater  
24 treatment plant and there's quite a bit of record on  
25 the bacterial levels, you know, essentially fecal

1 chloroform is monitored in compliance with their  
2 effluent regulations.

3 Their -- the effluent regulations as they stand  
4 -- stood in the last permit differ somewhat with the  
5 water quality criteria. So we evaluated compliance  
6 with a fecal chloroform level of 200 which is  
7 typically used as an equivalent to 126 colonies of  
8 E. coli per 100 ml.

9 If you recall we made that shift in the 2005  
10 Water Quality Standards to E. coli and so -- but we  
11 only have fecal chloroform data from the southwest  
12 wastewater treatment plant. And, again, 200 would be  
13 generally considered equivalent to the 126 E. coli  
14 criteria. And, in fact, previous rules the -- that  
15 200 level was our water quality criteria for fecal  
16 chloroform.

17 We evaluated those data from 2006 to the present  
18 and found that only 1.3 percent of the time did that  
19 200 value -- was that 200 value exceeded from the  
20 wastewater treatment plant. And, again, so almost 99  
21 percent of the data from the southwest plant was  
22 below that -- that fecal chloroform old criterion of  
23 200.

24 I'll also say that -- you know, this -- those  
25 data differ from their effluent reg- -- their

1 effluent limits and there was no violations during  
2 that period of their NPDES discharges.

3 So since there's such a small fraction of data  
4 from the southwest treatment plant that indicate  
5 levels exceeding what would be equivalent to the  
6 E. coli criterion and, you know, ten times less than  
7 that would be required to cause the 303(d) listing we  
8 recommend that the -- the Commission eliminate point  
9 source as one of the sources for the impairment.

10 Again, we're not asking for an elimination of  
11 the -- of the 303(d) listing just an elimination of  
12 point source as one of the causes of impairment.

13 CHAIRMAN HARDECKE: What's the water body again?

14 MR. TRENT STOBER: Wilson Creek.

15 It's been a recent addition. I don't believe  
16 it's in your packet.

17 CHAIRMAN HARDECKE: Oh, okay.

18 MR. TRENT STOBER: Because again

19 COMMISSIONER PARNELL: It's here.

20 MR. TRENT STOBER: -- and, John, can speak to this  
21 but my understanding is there was a public comment --

22 COMMISSIONER PARNELL: Page 235.

23 MR. TRENT STOBER: It might be -- I believe, it's  
24 listed as unknown in that version.

25 COMMISSIONER PARNELL: Pollutants are unknown and the

1 source and urban.

2 MR. TRENT STOBER: Yeah. But -- but that speaks to

3 aquatic life use impairment not the --

4 COMMISSIONER PARNELL: Okay.

5 MR. TRENT STOBER: -- bacterial impairment.

6 So from my understanding there was public

7 comment that was received about how data are handled

8 with losing stream and originally it was considered

9 for the 303(d) listing because it meets the geometric

10 mean of 126.

11 COMMISSIONER PARNELL: So where is the other listing?

12 You say it's not available.

13 MR. TRENT STOBER: John, where does the listing come

14 in --

15 MS. MALINDA STEENBERGEN: Is that what's in the blue

16 packet? Is that a new list?

17 MR. JOHN FORD: There should be old copy. It's on

18 (inaudible) one. It's the proposed 2010 list that

19 will be on the last page of that list.

20 COMMISSIONER PARNELL: 235?

21 CHAIRMAN HARDECKE: It's in bold print on the

22 addition --

23 MR. JOHN FORD: Right.

24 CHAIRMAN HARDECKE: -- or on the list in the blue

25 packet.

1 MR. SCOTT TOTTON: John, what's that -- on the -- in  
2 the blue packet the bolded what's that mean?

3 MR. JOHN FORD: I think they're four waters that  
4 are listed in boldface type and those are the ones  
5 that are recent additions to the list since the  
6 February public notice list.

7 MR. SCOTT TOTTON: It's listed for bacteria and  
8 sources point and urban nonpoint source.

9 MR. JOHN FORD: That's correct.

10 And I did have occasion to -- to look at the DMR  
11 data from the Springfield southwest plant a couple of  
12 days ago and I would agree that the disinfection that  
13 they're doing there is good and the -- it looks -- it  
14 looks like the bacteria coming from the wastewater  
15 plant is probably not a significant source that's  
16 causing these violations of the -- of the losing stream  
17 standard.

18 So we don't have any problem, at this point,  
19 with removing point source designation there and just  
20 saying its nonpoint source.

21 CHAIRMAN HARDECKE: Okay.

22 MR. TRENT STOBBER: I would also add that there's  
23 multiple nonpoint sources as well and, you know,  
24 within that watershed we have both rural and urban  
25 areas and -- and I don't think there's sufficient

1 information to really designate whether that's urban  
2 or rural nonpoint source or a combination thereof.  
3 So we would like to also add rural nonpoint source or  
4 recommend to add rural nonpoint source as one of the  
5 sources of potential impairment.

6 COMMISSIONER PARNELL: Where's the rural?

7 MR. TRENT STOBBER: This station is downstream of  
8 Springfield to some degree so there's a mixture of  
9 both land uses within the watershed.

10 COMMISSIONER EASLEY: You're saying move the point  
11 source, but add rural?

12 MR. TRENT STOBBER: Yeah. I believe that would be  
13 appropriate.

14 COMMISSIONER TUPPER: Are you talking about  
15 rural/urban nonpoint --

16 MR. TRENT STOBBER: Right. Right. Right. Just  
17 designating there's multiple sources of nonpoint  
18 sources within the -- within the watershed, but I  
19 would say we've evaluated, you know, most of these  
20 issues are caused during wet weather periods. We've  
21 evaluated data from North Fork River as well as Bull  
22 Creek which are both considered reference streams for  
23 the area and were actually used by U.S. EPA to -- as  
24 -- as targets for the recent publically noticed TMDLs  
25 for Wilson and Pearson Creek for those unknown source-

1 -- or the unknown impairment of aquatic life.

2       And I would add that in those streams based on  
3 the data available from USGS that 126 target is  
4 exceeded in North Fork River by 21 percent of the  
5 data and in Bull Creek 14 percent of the data. So, I  
6 think, it just ad- -- highlights in all these studies  
7 that there's -- there's occurrences even in, I think,  
8 streams that everybody would consider to be very high quality  
9 -- or levels that exceed this 10 percent criterion.

10       You know effectively by targeting that as a  
11 single sample or 10 percent exceedance we greatly  
12 reduce the target geometric mean for the water body  
13 given the spread and the data that we typically see  
14 in streams. Essentially by handling those data in  
15 that manner are the geometric mean that you'd have to  
16 target in these streams is about 20 to 40 CFU per 100 ml  
17 which is a great reduction in what -- in what we use  
18 for protection of our heavily used water bodies in  
19 this State.

20       So, I think, that -- that again just highlights  
21 the fact that moving forward we really need to  
22 evaluate what an app- -- what an appropriate level of  
23 bacteria criteria and how to manage those data for  
24 these losing stream situations because I suspect  
25 that those are violated probably more frequently than

1 what one would expect.

2 So with that, again, I would just recommend just  
3 in summary the exclusion of point source as a source,  
4 the inclusion of rural along with urban nonpoint  
5 sources and, again, recommend that moving forward we  
6 evaluate the manner in which we handle bacteria  
7 criteria in losing streams.

8 CHAIRMAN HARDECKE: So if I heard you right you're  
9 suggesting that some of these reference streams just  
10 the natural variation exceeds the 126 over 10 percent  
11 of the time.

12 MR. TRENT STOBER: Right. Correct.

13 In fact, in evaluating 169 water quality  
14 stations within the Elk River, Bull Creek, James  
15 River, Sac and Spring River watersheds we found that  
16 75 percent of the streams violated that 10 percent  
17 value.

18 So, I think, it's just really -- you know, I'm  
19 not --

20 CHAIRMAN HARDECKE: And those are considered the  
21 reference?

22 MR. TRENT STOBER: No. Those are all the streams out  
23 there. That's just, you know, a grab of all -- all  
24 data that are available just to give you a  
25 perspective of -- of what -- what all the streams are

1 like. Some of those obviously impacted and -- but  
2 they also include some of the more high quality  
3 streams that we have as well.

4 CHAIRMAN HARDECKE: Other questions? \_

5 (No response.)

6 MR. TRENT STOBER: Thank you.

7 CHAIRMAN HARDECKE: Did Randy want to speak? Randy  
8 Lyman.

9 MR. RANDY LYMAN: Morning Chairman, Commissioners.

10 CHAIRMAN HARDECKE: Morning.

11 MR. RANDY LYMAN: I'll just be real brief. I just  
12 wanted to put an exclamation point on the information  
13 that Mr. Stober presented and we would like to see  
14 the word "point" taken out of the -- of the sources  
15 and the word "rural" added to the urban nonpoint  
16 sources. We feel like that is appropriate.

17 Trent mentioned our -- our track record at that  
18 plant, the southwest plant, we've gone now for four  
19 years without any violations of anything that's in  
20 our permit and received gold awards from our -- some  
21 of our trade association for the last four years.  
22 And if we can go one more year we'll get platinum for  
23 five in a row, so --

24 Anyway and as we speak the new ozonation system  
25 is going in on the plant, which we've had on that

1 plant, you know, which is kind of state-of-the-art  
2 for a long, long time and the new -- the new system  
3 is going in with -- with some of the stimulus money  
4 and so forth and we'll be able also to -- to  
5 disinfect some of the wet weather flows at that point  
6 in time when that's completed, so --

7 Our data continues to just look better since  
8 recent expansions a few years ago. The last couple  
9 of years we're just not seeing any problems going on  
10 whatsoever in meeting our permit requirements and we  
11 just feel it's appropriate as we presented today.

12 Appreciate your time.

13 CHAIRMAN HARDECKE: Thank you.

14 MR. RANDY LYMAN: Thank you.

15 CHAIRMAN HARDECKE: Phil Walsack.

16 MR. PHIL WALSACK: Morning, Commissioners. My name's  
17 Phil Walsack with the Missouri Public Utility  
18 Alliance. I want to thank Robert Brundage for  
19 setting the table for the importance of data.

20 And Commissioner Easley you asked an outstanding  
21 question and I'm going to address it and Mr. Parnell  
22 you did the same.

23 Commissioner Easley you said we're -- we need to  
24 be careful about setting a precedent. And I want to  
25 talk to you about setting a precedent that happened

1 some number of years of ago at the inclusion of  
2 dissolved oxygen as a pollutant in Missouri on  
3 Missouri's 303(d) list.

4 Commissioner Parnell, I am ecstatic that before  
5 eleven o'clock we get to talk about money because I  
6 think money is driving the conversations. I  
7 would love to live in a pristine environment and that  
8 cost money and I have to figure out what I'm willing  
9 to spend to live in that environment. So thank you  
10 for bringing up an element of costs before 11. I  
11 appreciate that.

12 I want to talk about dissolved oxygen for a  
13 second. We wrote a letter, a fairly lengthy letter,  
14 to the Department about this notion that dissolved  
15 oxygen is not a pollutant, but rather a condition in  
16 the stream. You don't add dissolved oxygen or the  
17 lack of it to a stream so that it becomes on the  
18 303(d) List. We wrote this letter because we believe  
19 that just putting dissolved oxygen on the 303(d) List  
20 is a bad precedent. And we're getting to see the --  
21 the -- we're getting to see that play out.

22 In the community of Butler, they discharge to a  
23 Mound Branch and this is on Page 338-- of your -- or  
24 the public packet. I'm not sure what that page  
25 number equates to yours so I'll read just a tiny bit

1 of this.

2 They were listed for BOD and ammonia back in  
3 1998-, the Butler Wastewater Treatment Plant, then  
4 had to -- because they were listed as a 303(d)  
5 violation they had to make an upgrade, they did so in  
6 2003. The stream stayed on the list and because this  
7 stream stays on a list on the 303(d) List you have to  
8 craft something called a TMDL, a Total Maximum Daily  
9 Load.

10 You have to craft that document. In this case  
11 the EPA assisted the Department in 2010 to craft said  
12 document. Right now, the Butler Wastewater Treatment  
13 Plant they are -- well, they're rivaling Springfield  
14 for their own platinum award, you know, their CBOD is  
15 right now at 2.445 milligrams per liter. That is an  
16 amazingly low number.

17 And, yet, the TMDL came out and said, oh, by the  
18 way we'll make you ratchet that down 1.5 milligrams  
19 per liter, 1.5 parts per million. Now, the taxpayers  
20 and the ratepayers in Butler just had their stream  
21 listed, they just upgraded their wastewater treatment  
22 plant and, now, you're telling me based on a TMDL  
23 because low dissolved oxygen on our list we're going  
24 to go back to the ratepayers and say, I need you to  
25 pull out one more part per million, one more. I have

1 no idea what that's going to cost. Is that worth it?

2       It certainly is not worth it for the upstream  
3 affects on that stream which are low DO. Above the  
4 discharge of the wastewater treatment plant we have  
5 low dissolved oxygen. So wastewater plant is not so  
6 sophisticated that they can pump their waste stream  
7 up hill, upstream and contaminate the waste stream --  
8 the receiving stream with dissolved oxygen or low  
9 dissolved oxygen.

10       By placing low dissolved oxygen as a pollutant  
11 we craft this list, but then we have to do something  
12 about it. And that is our problem with listing  
13 dissolved oxygen as the pollutant. It is not a  
14 pollutant. It never was a pollutant. It was a bad  
15 precedent that was set some number of years ago and  
16 now look where we're at. Ninety -- and, now, I just  
17 did a simple count 'cause I'm a simple guy. Okay? I  
18 think there were 383 entries listed on that list of  
19 yours of which 90 are dissolved oxygen. That's 23  
20 percent of the workload for the Department is not  
21 pollution, but a condition of the stream. A  
22 condition of the stream it says on other TMDLs that  
23 were written. This one happens to be for Buffalo  
24 Ditch in Dunklin County, Kennett Wastewater Treatment  
25 Plant that says, um, boy upstream of the wastewater

1 treatment plant we have low dissolved oxygen.

2 There are reasons we have low dissolved oxygen  
3 because there is pollution out there. And we need to  
4 figure out what that is. And we have a place -- a  
5 place holder to do exactly that. It's called -- in  
6 your report there's a Table 4(c) you put the -- put  
7 those places on a special table, on a special list  
8 that doesn't then require a Total Daily Maximum Load  
9 to be written.

10 Obviously, I was the one who wrote that  
11 dissolved oxygen that Mr. Ford talked about. And I  
12 wrote that two of the brightest John's in the room,  
13 no disservice to any of the other bright John's  
14 'cause I know there are more than two here today. I  
15 want Mr. DeLashmit to comment on the following  
16 statement made by Mr. Ford in writing to me and in  
17 your packets on Page 343.

18 And then I want Mr. Ford to address this one  
19 element. Okay? I'm going to talk about Mr. Ford's  
20 first and then go back to Mr. DeLashmit's.

21 In Paragraph 2, it says had your comments been  
22 made earlier in the public participation process we  
23 might have vetted your idea to other stakeholders and  
24 the EPA. However, I think it is late in the process  
25 to be discussing this issue for the 2012 listing

1 methodology document.

2 Understand that I am a deadline guy.

3 Okay? I am. I perform well under stress, well  
4 under deadlines. You give me a floating deadline and  
5 I don't meet it. Say clean the garage this summer I'm not  
6 going to do that. Say clean this garage Sunday afternoon by God I  
7 can hit that. So the Department said July 28th is your  
8 deadline and I hit on July 20th. I made those  
9 comments during the public participation process I  
10 thought.

11 If this isn't the deadline that we're shooting  
12 for just give me the deadline. I'm an outstanding  
13 employee at hitting deadlines and I'll hit it. And I  
14 don't care when the deadline is you tell me when it  
15 is and I'll hit it.

16 Now, if we're saying the deadline is floating  
17 and your public comment is wanted but frankly just  
18 adds stress to the system then don't ask me to do it  
19 'cause I've got other things to do. I've got better  
20 things to do.

21 I want to provide great public comment in the  
22 right form in the right schedule so if you tell me to  
23 hit a deadline that's July 28th by gosh I'm going to  
24 do it. Now, I would like Mr. Ford to tell me what that really  
25 means, earlier in the public participation

1 process.

2 And then I want Mr. DeLashmit and I'm going to  
3 give him a heads up here and he already got a heads  
4 up about an hour ago that I was going to ask him this  
5 question because Mr. Ford's letter to us that's in  
6 your -- in your public comment at 343, first  
7 paragraph says, On the other side of the argument is  
8 the fact that the U.S. EPA Region 7 and I add  
9 emphasis here expects states lists to include DO.  
10 Now, hang on, is dissolved oxygen a pollutant or not?

11 So if it's not a pollutant why am I adding --  
12 why am I talking about that in the Clean Water Act?  
13 Nutrients, I'm with you. I got to thinking, and  
14 sorry I apologize for doing that.

15 I got to thinking how many other people on this  
16 list here, on the 303(d) List, have actually been  
17 removed for DO and something else has been put on  
18 there. And I come to the City of Monett, which is  
19 Clear Creek segment 3293, Page 282 in your 303(d)  
20 List. It says on there that nutrients are the problem  
21 in Monet. Wastewater treatment plant and that's the  
22 source. And when you pop over to the places that  
23 were deleted off the 303(d) List on Page 237, Clear  
24 Creek, it says right there wastewater treatment plant  
25 in Monett, Barry and Newton County low -- and

1 reason for deletion off the list low DO due to  
2 nutrients. Yes, that's what we're looking for.

3       The condition is low dissolved oxygen and what  
4 is my pollutant, I don't know yet, but in Monett it's  
5 nutrients by gosh and that's what we're going to hunt  
6 them down for and we're going to go after. We're going  
7 to go after nitrogen and you're going to go after  
8 phosphorous. Okay. I can do that.

9       I cannot shoot in the dark and chase low DO all  
10 over the Missouri streams when I've got -- you know,  
11 almost a million miles of Missouri streams. I cannot  
12 do that and neither can you, neither can the  
13 Department. That's too much work. Tell me what the  
14 pollutant is and I'll go get it. Tell me the stream  
15 condition and I can't do much.

16       I can put it on a list and says, let's figure  
17 out why this stream has low dissolved oxygen. It  
18 just might be a natural condition. It might be  
19 because someone's polluting the thing. It might be  
20 urban pollution; a point source, a nonpoint source  
21 but we can get to the bottom of the problem. But  
22 throwing it on a list, the 303(d) List, and then  
23 cranking out a very lovely, professional document  
24 that says, crank those numbers down at the wastewater  
25 treatment plants, boys. I know you were 2.4 but

1 we're going to get you to 1.5.

2 Are we serving the environment any benefit by  
3 doing that? That concludes my comments. The coffee  
4 was caffeinated this morning I can feel it.

5 (Laughter.)

6 MR. PHIL WALSAK: I would like the two brilliant  
7 John's in the room to address those two questions if  
8 they might and if it's the pleasure of the  
9 Commission.

10 Thank you.

11 CHAIRMAN HARDECKE: Could we get a response from the  
12 Department?

13 MR. SCOTT TOTTEN: John Hoke.

14 CHAIRMAN HARDECKE: John Hoke.

15 MR. JOHN HOKE: We're going to spring a 3<sup>rd</sup> John on you.

16 (Laughter.)

17 MR. JOHN HOKE: Thank you, Mr. Chairman. Thank you,  
18 Commission. My name is John Hoke. I'm the TMDL unit  
19 chief and I also have the privilege of being  
20 coordinator for the 2012 Water Quality Standards  
21 triennial review.

22 Mr. Walsack made some points about TMDLs and the  
23 standards and I felt it appropriate for the other  
24 John to get up and talk for me to address a couple of  
25 those things. You know, I think, it's widely

1 recognized that the Department acknowledges and  
2 recognizes that low dissolved oxygen is an issue in  
3 some streams whether you call it a pollutant or a  
4 condition.

5 Then that sort of stems from our one-size fit  
6 all as a Water Quality Standard as a 5 milligram per  
7 liter minimum. We recognize that there are other  
8 conditions out there that are acceptable, that do  
9 protect the designated beneficial uses. And, I  
10 think, we're going to work with stakeholders during  
11 this next Water Quality Standards triennial review to  
12 revise the DO criteria to allow for those wider  
13 ranges of excursions and those other criteria that  
14 EPA even has published in some criteria  
15 recommendation documents.

16 So we look forward to working with Mr. Walsack  
17 and others to craft those regulations and those  
18 revisions.

19 Speaking of the TMDLs; Mound Branch, City of  
20 Butler is one of a couple water bodies and permittees  
21 that are kind of caught in this TMDL consent decree  
22 that we and EPA as our partner required to develop  
23 TMDLs at this time before the end of the year to  
24 address those consent decree impaired waters.

25 We do, however, recognize that, that criteria

1 that the TMDL is supposed to hit may be in question,  
2 it may not be appropriate. So while the TMDL is,  
3 thank you very well written and technically  
4 documented, and I can't speak to the intricacies of  
5 the modeling. I do know that it targets the existing  
6 criteria of 5.0 and in places that it would require  
7 potential a significant reduction in BOD as well as  
8 nutrients.

9       However, recognizing that some facilities, like  
10 the City of Rolla, have already upgraded or are  
11 potentially planning on upgrading; the Department as  
12 part of that TMDL process as written into the  
13 implementation section, a phased approach to  
14 implementing any requirements the TMDL might require  
15 of a facility and extend the amount of time that we  
16 would potentially put -- until we put the new permit  
17 limits in to investigate a number of things. Is the  
18 criteria appropriate? If not, let's develop a  
19 criterion that's appropriate, redo the modeling and  
20 set the permit limits appropriately. I think in some  
21 cases we'll find that the criteria is appropriate and  
22 no other upgrades may be necessary.

23       There'll be other situations where perhaps an  
24 upgrade will be necessary and perhaps the upgrade  
25 will be more modest than a radical down to, you know,

1 no BOD.

2       So, I think, we've put into place even for these  
3 TMDLs a path forward for the permittees and we may  
4 need to solidify this and make it more durable in  
5 some sort of consent judgment or something like that  
6 with -- or administrative order with the permittees  
7 to kind of get to the Department's intention not to  
8 implement those restrictive requirements until such  
9 time as we have a chance to go back and -- and study  
10 those waters given that -- you know, our time line  
11 for developing the TMDLs is short but our  
12 implementation is at the Department's speed and  
13 discretion. So, I think, we'll take the time then to  
14 make sure that any upgrade is absolutely necessary  
15 and reasonable to meet the -- the Water Quality  
16 Standards.

17       And that's all I had so I'll turn it over to the  
18 other John's and they can respond to anywhere that I  
19 missed unless you have questions for me.

20 COMMISSIONER PARNELL: Are you implying that every  
21 situation is negotiable?

22 MR. JOHN HOKE: No. Well, a permit is supposed to  
23 target the Water Quality Standards and any other TMDL  
24 document that's out there. We've been living with  
25 this DO criteria, which is by far the probably the

1 most restrictive out there for -- for all waters of  
2 the state recognizing that all waters may not meet  
3 that.

4 I think we need to be more flexible in how we  
5 set the standards and more reasonable on how we apply  
6 the standards for those waters in 303(d) assessment  
7 as well as TMDL development.

8 The hard and fast is a facility needs to meet  
9 Water Quality Standards. If we don't know, have  
10 certainty what that standard is we need to give some  
11 time for the scientist and engineers to develop  
12 appropriate criteria to make sure that what we do  
13 require is reasonable. And so for these TMDLs that  
14 are caught in the one lawsuit that has to deal with  
15 the consent decree on TMDL development we recognize  
16 that maybe some more time is needed. So we'll allow  
17 that time before we put these requirements on  
18 facilities to determine whether or not the target  
19 we're shooting at is actually correct.

20 So we can be flexible on how we implement the  
21 TMDLs. They have to be done by the end of this year,  
22 but we're flexible on how we can implement those  
23 TMDLs.

24 CHAIRMAN HARDECKE: Other John's?

25 MR. JOHN HOKE: Thank you.

1 MR. JOHN FORD: Mr. Walsack mentioned that he's a guy  
2 that does well with fixed dates so I will remind him  
3 that there were two fixed dates on our public notice.  
4 The one that he responded to which was July 28th and  
5 that was the ending but there was another date and  
6 that was February 24th and that was the beginning. So  
7 we had a public notice period of over 100 days.

8 One of the reasons we have such a long period is  
9 so that within that public notice period if people  
10 bring things to our attention that they want to  
11 discuss we can pull in all the stakeholders that want  
12 to be informed on that issue and have an opinion so  
13 that we can all discuss it.

14 And that's only going to work if we get involved  
15 in the process early. So, Phil, I would say the date  
16 next time for you to focus on is not the end date,  
17 but the beginning date if there's something important  
18 we need to discuss, let's start early.

19 Secondly, with regards to the DO issue no  
20 question the dissolved oxygen is an inherent  
21 condition of the water. It is not a pollutant in  
22 itself. Dissolved oxygen, however, is affected by  
23 many different things in the stream by organic  
24 material that acts as oxygen demanding substances.  
25 It's affected by the levels of nutrient which then

1 affect the levels of algae and algae then affects  
2 oxygen. It's affected by sediment oxygen demand as  
3 well as material that's suspended in the water  
4 colony.

5       What we do when we make the list is if it looks  
6 like there is convincing data that a dissolved oxygen  
7 problem is caused by something that we can  
8 specifically name and that might be nitrogen,  
9 phosphorous, nutrients, whatever or BOD itself. We  
10 try and list that as the cause, not DO. However, in  
11 some cases we just don't have the information that tells us  
12 what's causing the problem. Is it a combination of  
13 things? Is it something we just don't have  
14 information on? So in those cases we list it as low  
15 DO.

16       I'd also note that a couple of cycles ago, I  
17 believe, it was the Department's decision not to list  
18 waters for low DO on the 303(d) List and EPA did not  
19 view that well. And maybe Mr. DeLashmit would like  
20 to talk about that.

21 MR. JOHN DeLASHMIT: Good morning, I'm John  
22 DeLashmit, again, a couple of things. I hope I kept  
23 track of all the questions that Phil wanted answered.

24       First of all, EPA expects that states assess in  
25 their 303(d) List against their Water Quality

1 Standards and Missouri does have a Water Quality  
2 Standard for dissolved oxygen. It's a little  
3 different than most of the Water Quality Standards  
4 that we see. Most of the criteria and a lot of the  
5 criteria are expressed as the maximum concentration.  
6 DO is kind of upside down. It's expressed as a  
7 minimum concentration. You must be above 5 -- or at  
8 5 or above in order to satisfy the Water Quality  
9 Standard. So it's a little bit different than the  
10 others.

11 But it is as the other folks have said a result  
12 of many things; nature can be one of them, nutrients  
13 can be another and unfortunately Missouri lacks  
14 nutrient criteria for streams. It's something that  
15 we've pointed out repeatedly and we're anxious and  
16 hopeful that the State will develop nutrient criteria  
17 at some point. Then maybe we can compare against  
18 that instead of looking at dissolved oxygen.

19 But the dissolved oxygen can (inaudible)  
20 response variable to pollution much like chlorophyll  
21 A. You will also see on the list that there are some  
22 water bodies listed for chlorophyll. Well,  
23 chlorophyll isn't necessarily a pollutant. As I was  
24 growing up, I think, it was an essential ingredient in  
25 breath mints and it's also something that's produced

1 by plants. And nutrient enrichment can cause  
2 chlorophyll A to be at high levels. That's one of  
3 the things we use to indicate that perhaps nutrient  
4 enrichment is taking place and there's pollution and  
5 nutrients need to be reduced.

6 So the DO, I think, you're correct it's not  
7 really a pollutant, but it is the result perhaps of  
8 pollution and when we target that we're looking at  
9 possible ways to respond to increase the level of  
10 dissolved oxygen and implementation of the TMDL as  
11 John, first John, said it's something that the State  
12 is in charge of and hopefully that when we're looking  
13 at implementing the TMDL we're looking to reduce the  
14 factors that are causing this suppressed oxygen in  
15 the stream.

16 And was there another -- did I forget a question?

17 MR. PHIL WALSHACK: I'll let you stand down on that.

18 MR. JOHN DeLASHMIT: Okay.

19 MR. PHIL WALSHACK: I want a piece of you later.

20 MR. JOHN DeLASHMIT: I'll be here all day.

21 Thank you.

22 MR. PHIL WALSHACK: Again, Phil Walshack, with Missouri  
23 Public Utility Alliance. I will close with this; we  
24 had an attorney general named Ashcroft. In Ashcroft  
25 versus Union Electric Company they held that

1 discharging water with low dissolved oxygen level  
2 does not constitute either pollution or contamination  
3 since both require the addition of contaminants or  
4 pollutants.

5 That is the key thing here. Having 90-some-odd  
6 water bodies on the list so that you can craft a TMDL  
7 places a workload that isn't warranted. You're doing  
8 work that may not be warranted. If you just save  
9 those low DO waters, put them on a list, keep  
10 assessing them, sampling them with good quality data,  
11 you're going to be able to tell what the pollutant  
12 is. That's the appropriate methodology. Don't get  
13 ahead of yourself by just putting them on a list and  
14 then cranking out a court decreed consent order.

15 And I appreciate Mr. Ford's comments that the  
16 comment started in February. I do appreciate that.  
17 That game is 60 minutes long. It is football season  
18 everyday counts. And if you need me to come and  
19 score 40 in the first quarter, I'll score 40 in the  
20 first quarter but just let me know that.

21 Thank you, Commissioners.

22 CHAIRMAN HARDECKE: Thank you.

23 Are you ready for a vote on this?

24 COMMISSIONER TUPPER: Ready.

25 What you want me to do with the Springfield

1 deal?

2 COMMISSIONER EASLEY: Yeah.

3 COMMISSIONER PARNELL: Just amend it I guess.

4 **COMMISSIONER EASLEY: You want me to make the motion?**

5 **Mr. Chairman, I would move that we adopt**

6 **the list as proposed with the one minor**

7 **amendment that for Wilson's Creek point be eliminated**

8 **and rural be added so it would be rural/urban NPDES.**

9 **COMMISSIONER TUPPER: Second.**

10 MS. JENNIFER FRAZIER: Excuse, Mr. Chairman, before

11 you vote to amend the list I'd like to speak to you

12 and provide counsel in closed session on that.

13 CHAIRMAN HARDECKE: Okay. All right.

14 MS. JENNIFER FRAZIER: If we could take a five minute

15 break and maybe take a vote to go into closed session

16 or ten minutes I'd appreciate that.

17 CHAIRMAN HARDECKE: That'd be fine.

18 Who wants to make a motion to go into closed

19 session?

20 **COMMISSIONER TUPPER: I move the Commission go into**

21 **closed session.**

22 CHAIRMAN HARDECKE: I think you --

23 **COMMISSIONER PARNELL: Second.**

24 MS. JENNIFER FRAZIER: For the purpose of --

25 (Vote taken, all Commissioners voted Yes) (Break in proceedings.)

1 COMMISSIONER PARNELL: Mr. Chairman, if I may, I'd  
2 like to amend my motion that we approve the list with  
3 two exceptions: Wilson's Creek and Cave Spring  
4 Branch, which the Commission will recommend it be  
5 extended for further public comment.

6 COMMISSIONER TUPPER: Second.

7 CHAIRMAN HARDECKE: Malinda, take the vote, please.

8 MS. MALINDA STEENBERGEN: Commissioner Easley?

9 COMMISSIONER EASLEY: Yes.

10 MS. MALINDA STEENBERGEN: Commissioner Tupper?

11 COMMISSIONER TUPPER: Yes.

12 MS. MALINDA STEENBERGEN: Commissioner Parnell?

13 COMMISSIONER PARNELL: Yes.

14 MS. MALINDA STEENBERGEN: Chair Hardecke?

15 CHAIRMAN HARDECKE: Yes.

16 Okay. We'll move on to **Tab No. 3 the 2012**  
17 **303(d) Listing Methodology Document**, John. John Ford  
18 take out?

19 MR. SCOTT TOTTON: Bill, is John Ford back there?  
20 Bill Whipps is John Ford back there?

21 MR. JOHN FORD: Good morning, again, Commissioners,  
22 the listing methodology document; that describes how  
23 the Department will use water quality data to  
24 determine if waters of the state are impaired.

25 The Department Staff meets with stakeholders and

1 other interested members of the public approximately  
2 every two years to revise this document as needed.  
3 The Department has a public participation process for  
4 revision of the LMD that runs concurrently with the  
5 public notice for the 2010 303(d) List. All comments  
6 received on the proposed 2012 listing methodology to  
7 date are documented in the minutes of the 305(b)  
8 meetings held in the spring of 2010, which are  
9 included in the administrative record or appear in  
10 the minutes of the Clean Water Commission hearing on  
11 2012 LMD on July 7th, 2010.

12 The Department received four comments related to  
13 2012 listing methodology during the public meetings.  
14 The Department agreed with these comments and the  
15 2012 listing methodology has been revised  
16 accordingly. Two additional comments were received  
17 at the July 7th hearing on the listing methodology  
18 document. One comment express concern over the  
19 current method of interpreting biological data for  
20 small streams, but did not make a counter proposal  
21 for how this should be done.

22 The Department currently uses methods that are  
23 widely supported in the technical literature and we  
24 believe that our current method is the proper one. The  
25 other comment suggested there might be a need for

1 clarifying language about the interpretation about of  
2 the 96 hour exposure period. At the meeting the  
3 Department said we would be willing to look at any  
4 language to comment or propose but to date we have  
5 received none.

6 Revisions that were made did not result in any  
7 major changes from the 2010 listing methodology that  
8 was approved by the Commission. Minor changes  
9 include, one, acute ammonia exposure period changed  
10 from 24 hours to 1 hour. This corrects the error in  
11 the 2010 listing methodology. Since the acute  
12 ammonia criteria in our standards is based upon a 1  
13 hour exposure period not 24.

14 And the second change was the calculation of the  
15 sediment equation. Now, uses 150 percent of the  
16 probable affect laws instead 100 percent. This  
17 change makes the assessment of sediment toxicity for  
18 multiple metals rise to the same level of proof as  
19 for individual metals. The change corrects an  
20 oversight in 2010 listing methodology.

21 The other wording changes are not changes in  
22 methods used but simply add clarifying language.  
23 These include clarification about the toxics rules as  
24 it relates to data age, clarification of how the  
25 Department assesses aquatic invertebrate communities

1 in small streams, clarification of how the Department  
2 assesses compliance with antidegradation provisions  
3 in the Water Quality Standards and clarification of  
4 the definition of Category 4(c) and Category 5 waters  
5 and removal of language related to the Departmental  
6 TMDLs, which are outside the scope of this document.

7 The Department received three comments on the  
8 proposed 2012 list, our listing methodology document.  
9 The first was that dissolved oxygen should be  
10 eliminated as a 303(d) pollutant. The Department  
11 response was that we agree in principle and we would  
12 hope that EPA would agree. The Department will broach  
13 this subject with EPA prior to the development of the  
14 next list.

15 Second comment concerned the need to revisit the  
16 current sediment quality guidelines based on a recent  
17 study of metals toxicity in the Joplin area. The  
18 Department response was that we will review the study  
19 and discuss as part of the 2014 listing methodology  
20 document revisions.

21 And the third comment expressed concern that the  
22 current site-specific criteria for lakes are so  
23 stringent that many high quality lakes may be placed  
24 on the 303(d) list. This comment was not a criticism  
25 of the current listing methodology. But

1 consideration of other statistical methods, which  
2 might be used in the 2014 listing methodology  
3 might alleviate some of this concern.

4 Our recommended action the Department recommends  
5 that the Commission approve the attached --  
6 Attachment 2 the clean copy of the proposed 2012  
7 303(d) listing methodology as is or with any changes  
8 deemed necessary by the Commission.

9 That's the end of my statement. Do you have any  
10 questions?

11 COMMISSIONER PARNELL: This may or may not be the  
12 place to discuss this, but I did agree with Chairman  
13 Hardecke said about our constituents understanding  
14 the regulations by which they're regulated. And I  
15 don't know how to reflect it in this discussion, but  
16 Mr. Brundage and his associate raised some legitimate  
17 questions about how you can track back to build  
18 credibility and is that something you're going to  
19 look at? Is that -- is that something that warrants  
20 more attention? Not money, but more attention.

21 MR. JOHN FORD: Maybe that's better answered by  
22 someone from our lab, Chris, are you here? I guess  
23 Chris Boldt is not here. We had a couple of folks  
24 from our lab, but I talked to them at the break.  
25 They said that the information that was requested was

1 sent. It was all there, it was just a matter of  
2 linking -- linking it up. The data was there. The  
3 information was there that they could have linked  
4 individual samples with quality assurance samples.

5 COMMISSIONER PARNELL: This sounds like a  
6 communication issue and I would just hope that we  
7 would follow-up on it.

8 MR. JOHN FORD: I -- I think we can. There were --  
9 they're certainly welcome to talk to the folks in our  
10 lab and try and understand -- you know, how we do --  
11 how we do and track quality assurance and how that's  
12 recorded in our data system.

13 You know if there's ways that we can -- we can  
14 develop a report out of that data system that doesn't  
15 take a lot of time and expense, I think, we'd  
16 certainly be happy to do that.

17 MR. SCOTT TOTTON: Chris Boldt is here. He's in the  
18 back of the room. Chris, would you like to come up  
19 and address that?

20 MR. CHRIS BOLDT: I wasn't here for the whole  
21 question.

22 MR. JOHN FORD: I think the question was: Are we  
23 actually tracking everything we need to be in the way  
24 of quality assurance and --

25 COMMISSIONER PARNELL: No. My question was trying to

1 get back to the question that was raised earlier.  
2 Can we communicate with our constituents to help them  
3 understand and reconcile the data we have? And Mr.  
4 Brundage and his associates said that that was not  
5 possible now. And, I think, Mr. Ford's saying that's  
6 a communication issue and that's -- it doesn't have  
7 to be part of this approval process, but I think it  
8 warrants this Commissioner saying I would like to see  
9 you pursue something to improve that communication  
10 and understanding as long as it doesn't impose an  
11 undo burden financially or workforce-wise on you.

12 MR. SCOTT TOTTEEN: Chris, can you introduce yourself  
13 for the record?

14 MR. CHRIS BOLDT: I'm Chris Boldt. I'm the  
15 laboratory manager for ESP.

16 I think that the answer to the question is we do  
17 have a level of QC that's required for us on -- on  
18 every sample that we run. We put it into a data  
19 packet and that data packet was given to the  
20 interested party as well as the chain of custody and  
21 all supporting documents.

22 Now, when that packet was given it's not -- it's  
23 what I would call a level one or two data packet and  
24 there are up to four levels of data packet. A level  
25 four data packet would be the most comprehensive and

1 would include case narratives. It would include all  
2 of the QC that's charted and tracked in a maybe, what  
3 I would say, more user friendly way, but it requires  
4 a lot of time to do that.

5       The data packet that we gave had all the QC  
6 information for that particular run or was pertinent  
7 for that run. Some of the data packets would have  
8 included samples that were not a part of this  
9 particular project and that's because we don't -- we  
10 don't segregate our samples into particular projects.  
11 So we may have run samples from other projects and  
12 included them with this, but we don't have the means  
13 of separating that out on our -- on our hard data --  
14 what we call hard data packets or what comes off the  
15 instrument in terms of instrument runs.

16       So what you'll see is samples in this project  
17 that were printed with other samples and the QC is --  
18 is pertinent to all of the samples not just for that  
19 particular project. So in order to separate the QC  
20 out and the samples out into a nice, neat packet for  
21 that particular project in my opinion would be well  
22 beyond the scope of what we can do as a laboratory  
23 with the means that we have.

24       But I also say that other laboratories, private  
25 laboratories, contract laboratories will not give you

1 anymore data than we submitted for this particular project  
2 unless requested and it will come out a higher cost.  
3 So if you want a level three or four data packet from  
4 a private laboratory you're going to pay probably,  
5 I'm only guessing, but probably twice the cost in  
6 order to do that because it takes a certain amount of  
7 time to put all that together.

8 So I'm not sure if I answered your question  
9 completely. But just to simplify --

10 COMMISSIONER PARNELL: No, you did. You said you  
11 can't do it with a cost reasonable basis.

12 MR. CHRIS BOLDT: Yeah. And the bottom line is we do  
13 about 25,000 samples a year and this was, I think,  
14 and I'm guessing around 300 samples that we had to  
15 dig out over eight years out of archives. So you can  
16 see that in order to -- to kind of segregate these  
17 and put these not nice projects would just be beyond  
18 what we have the capability of doing.

19 And actually it's beyond what the capability of  
20 a lot of laboratories would do. They don't give you  
21 those data packets unless you ask for it and then  
22 they probably assign a project manager specifically  
23 for that project and they hand-guide it all the way  
24 through. We just -- we don't do that. We certainly  
25 have the QC and that stuff available and it was

1 provided, but just not in the concise packet that may  
2 be provided at a higher level.

3 CHAIRMAN HARDECKE: I guess my question is: It seems  
4 -- and I don't know if this is what Robert was asking  
5 for, but it seems like if we have a water body on the  
6 303(d) List then say here we got Troublesome Creek,  
7 if someone wanted to know where the data was  
8 collected and how it was collected on Troublesome  
9 Creek that you should be able to give them that in a  
10 reverse order?

11 MR. CHRIS BOLDT: Um-huh. Yeah. We can certainly do  
12 that. And I -- I think all the data that we provide  
13 as far as I know you should be able to make the  
14 connection between say Trouble Creek, the  
15 sample number, location, when it was collected, you  
16 know, time and date --

17 CHAIRMAN HARDECKE: And who collected it, conditions  
18 --

19 MR. CHRIS BOLDT: -- some of the field readings and  
20 stuff like that and, I think, the field notebooks  
21 were provided. It's my understanding that that was  
22 the case.

23 So, yeah, that should all be traceable  
24 certainly. And if you were to call me on the phone  
25 and say, hey, I've got Trouble Creek can you trace some of that

1 back I could do that without having to go through this process I  
2 can probably look in our LIMS and in a matter of, you  
3 know, short period of time could -- could trace that  
4 back.

5 CHAIRMAN HARDECKE: I guess my point is, we're  
6 putting water bodies on a list here which caused a  
7 varying degrees of regulation for the residents in  
8 Missouri and I think the question-- what I'm perceiving  
9 the question to be is that if someone wants to know  
10 how, when and why that data was collected that we  
11 should be able to provide them that in a format that  
12 they wouldn't have to put the pieces of the puzzle  
13 together.

14 And Hans made a comment that if -- if the  
15 program was put together and I know you do a lot more  
16 testing that what's on the 303(d) List, but possibly  
17 since this is such an important list and has other  
18 ramifications it would be worth putting a program  
19 together that the water bodies that are listed here  
20 that data would go into a format whereby if somebody wants to  
21 know about Troublesome Creek you can plug that in and  
22 -- and send it to them. Is that unreasonable?

23 MR. CHRIS BOLDT: Well, I'm not sure if it's  
24 unreasonable but it may be outside the scope of what  
25 we do as a laboratory so you may be asking the wrong person

1 there. In other words, we're providing data to  
2 programs just like a private laboratory would provide  
3 it to clients. So we provide them with -- with hard  
4 copy results. They don't even get the -- the level  
5 of data that was provided for this project. We  
6 retain it at the laboratory and -- you know,  
7 and then archive it after several years.

8       So we retain all the quality control  
9 information, all of the stuff that was associated  
10 with that, the chains of custody and that sort of  
11 thing. So, basically, the only thing that the --  
12 that -- what I'll call our client, the program, gets  
13 is the final report with -- with minimal information  
14 and sample result, any qualification, data collection  
15 and time of collection, that sort of thing.

16       So it's minimal information. We can provide it  
17 beyond that as far as somebody that wants to know  
18 more information about that if it's not -- if it's on  
19 the final report then that should be available  
20 through the Internet on our website to be able to  
21 find that information. Most of what we do is  
22 published to the -- to the Internet so that -- that  
23 would be available.

24       As far as, you know, whether or not we gave a  
25 higher level data packet a three or four that still

1 wouldn't really answer that question in terms of  
2 being able to look at the data like you're talking  
3 about at least in my opinion I don't think that would  
4 be possible.

5 CHAIRMAN HARDECKE: Other questions?

6 (No response.)

7 CHAIRMAN HARDECKE: Thanks for your explanations.

8 MR. CHRIS BOLDT: Yep, thanks.

9 CHAIRMAN HARDECKE: John?

10 MR. JOHN FORD: Any other questions about the listing  
11 methodology?

12 (No response.)

13 CHAIRMAN HARDECKE: Okay. We got a couple cards  
14 here. We may come back to you. Robert?

15 MR. ROBERT BRUNDAGE: Good morning, Commissioners,  
16 Robert Brundage, Newman, Comley & Ruth. Hans  
17 Holmberg and I will make a few additional comments.  
18 I did participate in the listing methodology. John  
19 Ford does an excellent job of making himself  
20 available and answering questions.

21       There was one change that was made in here that  
22 I appreciate concerning -- comparing data from small  
23 streams like macro-invertebrate data from very small  
24 streams to reference values of very large streams.  
25 And that is addressed in the -- in your briefing

1 document on Page 409. So that was a positive  
2 development.

3 At your last meeting I made a comment about  
4 toxicity data where it says no more than one  
5 exceedance of acute or chronic criteria in three  
6 years for all toxics. So in other words if you have  
7 two grab samples and you've exceeded for the chronic  
8 level, which is the lower level then you were put on  
9 the 303(d) List and there really hasn't been a change  
10 in here concerning that. So I don't have any  
11 specific language for you, but I want to point out that I  
12 felt -- still think that this listing methodology has  
13 a tendency to place overreliance upon grab samples  
14 when trying to gauge chronic compliance.

15 The third thing I wanted to say and Hans  
16 Holmberg will help provide a little bit more details.  
17 And it's regarding probable affect concentrations. When  
18 we submitted some comments on the 303(d) List we also  
19 included some references that the probable affect  
20 concentration levels listed here in the listing  
21 methodology are I guess out of date. I had  
22 previously expressed concern that I didn't think they  
23 were appropriate for maintaining this listing  
24 methodology; however, they are still in here today.

25 And the same researcher who had set forth the

1 old values has now updated his research and the  
2 levels are in fact higher for most metal constituents  
3 and its probable affect concentrations for metals and  
4 sediments. And this listing methodology here  
5 proposed to you today doesn't take into account those  
6 new higher levels. I think, John, your response was  
7 you had considered for the 2014 303(d) List  
8 cycle, but that's a long ways away and I  
9 suggest maybe there's an opportunity to do something  
10 now and to better explain the probable affect  
11 concentration issue.

12 I will ask Hans Holmberg to, please, come to the  
13 podium here and explain that to you. And, I think,  
14 Hans had provided -- when we handed out those Power  
15 Point slides earlier. There was two slides on this  
16 issue at the very end of that packet so if you still  
17 have that you might want to refer to those.

18 MR. HANS HOLMBERG: Thank you, Commissioners. I'm  
19 Hans Holmberg with LimnoTech. I'm commenting on the  
20 use of sediment quality guidelines in the 2012  
21 listing methodology document.

22 The probable affects concentrations are levels  
23 that are used in the listing methodology are based on  
24 a study by a researcher named McDonald under contract  
25 the EPA of his 2000 paper in which the listing

1 methodology he refers to is called The Development  
2 and Evaluation of Consensus Based Sediment Quality  
3 Guidelines for Freshwater Ecosystems. Those values  
4 were developed on sediment samples collected across  
5 the country from sediments impacted by multiple  
6 sources of pollution and contaminants including  
7 hydrocarbons as well as metals.

8         And this is a concern that that document itself,  
9 the 2000 study recognizes that the toxicity threshold  
10 to develop they're taking into account multiple types  
11 of pollution and sources. The authors also state  
12 that the thresholds should be used along with other  
13 tools to inform decisions that Mr. Ford mentioned  
14 previously in related to the dissolved oxygen  
15 discussion that the Department will use a weight of  
16 evidence approach when measuring one parameter  
17 doesn't give a definitive decision on whether a  
18 stream is impaired or not.

19         We would make the case that use of these  
20 sediment quality guidelines can be used as a tool  
21 amongst the weight of evidence approach in assessing  
22 a stream, but it might guide further study, either  
23 more sediment sampling, toxicity sampling within that  
24 stream itself or looking at the aquatic life  
25 communities there. And in making an impairment

1 determination in listing that stream would be better  
2 listed for the observed affects rather than listed  
3 for contamination in the sediment itself as is the  
4 current practice.

5 And the authors also recognize in the 2000  
6 document the need for site-specific data given the  
7 variability they saw on the data set used in the 2000 study.

8 As Mr. Brundage mentioned McDonald again under  
9 contract with EPA conducted a study published in 2009  
10 in the tri-state mining district of Missouri,  
11 Oklahoma and Kansas. This study collected more  
12 representative data to what we would find in some of  
13 the parts of Missouri and some of the streams  
14 potentially impacted by mining operations.

15 And that study presented these probable affects  
16 concentrations and levels at a much higher level than  
17 what was in the 2000 study. Cadmium was up 247  
18 percent, lead up 71 percent, zinc up 542 percent over  
19 what was presented in the 2000 study.

20 These results -- and again in that study the  
21 authors continue to recognize the variability even  
22 within the tri-state mining district and then looking  
23 at a specific stream they strongly recommend  
24 collecting site-specific data to support a sediment  
25 toxicity threshold.

1           So with that in mind we'd recommend that the 2012  
2 listing methodology document not use these probable  
3 affects concentrations as measure of determining  
4 impairment, but again could be used with the new data  
5 to guide future sampling or in the weight of  
6 evidence approach to determine impairments and list  
7 appropriately.

8           Thank you.

9 CHAIRMAN HARDECKE: Thank you.

10          Do you have anything else, Robert?

11 MR. ROBERT BRUNDAGE: I asked Mr. Holmberg to follow-  
12 up just a little bit on what you heard from the  
13 gentleman from the laboratory on our response to some  
14 of his comments.

15 MR. HANS HOLMBERG: Again, this is Hans Holmberg with  
16 LimnoTech. I want to express my appreciation for the  
17 cooperation of Mr. Ford and Mr. Boldt demonstrated in  
18 this process in trying to winnow -- sift and winnow  
19 through the data and information that we were trying  
20 to acquire to obtain the -- to assess the data  
21 quality behind the 303(d) listings. They were  
22 responsive and always helpful in their comments.

23          Mr. Boldt said that he believes we were provided  
24 with all the information to connect the data in the  
25 303(d) tables to the quality assurance, quality

1 control packets that were provided by the lab. We  
2 have done our beset efforts to connect those pieces.  
3 We have not been able to do so with the information  
4 provided.

5 Perhaps it is a miscommunication issue as we've  
6 gotten one piece of the puzzle that's not connected  
7 and then another piece we -- we can start to draw  
8 lines but we haven't been fully able to connect.

9 As I mentioned, all of the data rather a  
10 relative, a minority of the data back to their  
11 quality assurance, quality control packets from the  
12 laboratory.

13 That's all. Thank you.

14 CHAIRMAN HARDECKE: Thank you.

15 John, do you have any comments on the probable  
16 affect concentrations?

17 MR. JOHN FORD: Yes. Thank you.

18 Robert did supply us during the public notice  
19 period with information that this -- this other  
20 study, this more recent study that took place in the  
21 Joplin area. And they did recommend higher levels  
22 and site-specific information was probably more  
23 valuable. We have not had a chance yet to read that  
24 document or go over it. Again, we received the  
25 information fairly late in the process and so not

1 having a chance to read and evaluate it ourselves we  
2 didn't have a chance to bring it before the  
3 stakeholders during this public participation  
4 process.

5 My suggestion was that between now and the next  
6 revision of the listing methodology we review this  
7 document. We've vet it with all the stakeholders so  
8 that everybody can look and then make a decision on  
9 how we want to revise these PECs in the next listing  
10 methodology, the 2014 version.

11 CHAIRMAN HARDECKE: But that's going to put it off  
12 for another whole cycle.

13 MR. JOHN FORD: It would. And, I guess, the only  
14 comment I would have at this point on our use of  
15 these PEC values is that the only streams that they  
16 have resulted in listings on are those where we have  
17 heavy metal mining in the State. And almost all of  
18 those we have had confirmation from other types of  
19 information like biological studies that show  
20 toxicity that these streams do have problems and  
21 appear to be related to heavy metals.

22 So I don't think the current ones that we're  
23 using are causing us a problem with going out and  
24 selecting streams that aren't impaired. In other  
25 words, the streams that we are -- that we are putting

1 on the list based upon these PEC values and other  
2 information seem to be supported by other types of  
3 data that they do in fact have toxic conditions.

4 I'm not concerned that, you know, we're way off  
5 from where we need to be, but we're certainly willing  
6 to -- to look at this new information.

7 CHAIRMAN HARDECKE: Are they impaired from those --  
8 those metals --

9 MR. JOHN FORD: They're --

10 CHAIRMAN HARDECKE: -- over the levels that are  
11 contained in this report or --

12 MR. JOHN FORD: Yes. The ones that are listed are  
13 ones that have concentrations higher than the PECs  
14 we're using now.

15 CHAIRMAN HARDECKE: But, I mean, if you would take  
16 the -- the new levels that he indicated in this  
17 report --

18 MR. JOHN FORD: I haven't even reviewed those yet. I  
19 don't know what those numbers are.

20 CHAIRMAN HARDECKE: Okay.

21 COMMISSIONER TUPPER: John, is McDonald's Joplin  
22 report come out in final form? All I've seen is a  
23 draft.

24 MR. JOHN FORD: I haven't been able to get a copy  
25 yet.

1 COMMISSIONER TUPPER: I -- you know, I don't think  
2 you'd -- I'd like to see a final report before we do  
3 major changes.

4 CHAIRMAN HARDECKE: Okay. Phil Walsack?

5 MR. PHIL WALSACK: Thank you, Commissioners. I'll  
6 make this brief.

7 I believe and if I misspeak his name I  
8 apologize. Chris from the laboratory just stated  
9 something that gave me an uneasy feeling and, I  
10 think, Commissioner Parnell, you summarized the  
11 answer fairly nicely which is the lab isn't willing  
12 to or can't arrange laboratory data in a fashion  
13 that's publically useable.

14 Guys we're going to spend billions of dollars in  
15 municipal governments in Missouri based on laboratory  
16 data. That's what we're going to do. Billions of  
17 dollars in Missouri, ratepayers' dollars is based on  
18 lab data. We got to get the lab data right. We got to  
19 share the lab data so we know we're spending the  
20 money in the right places. It is the critical piece,  
21 the cornerstone of this whole deal. We got to have  
22 good lab data. So I implore the Department that it's  
23 publically palatable and useable so we can ascertain  
24 whether we're spending billions of dollars in the  
25 right place.

1 Thank you.

2 CHAIRMAN HARDECKE: Thank you.

3 What's your pleasure?

4 COMMISSIONER PARNELL: I'm ready to --

5 CHAIRMAN HARDECKE: Oh, John, I've got one more  
6 question. I don't know if this is the place for it,  
7 but a few years ago we discussed putting the streams  
8 that were listed for mercury on a separate list and  
9 I was wondering, whatever happened to that?

10 MR. JOHN FORD: I don't -- I don't remember any  
11 discussion about that personally. As far as I know -  
12 -

13 CHAIRMAN HARDECKE: It was at a Commission meeting a  
14 few years ago. I don't remember exactly when. There  
15 was a provision of another -- it's on the 303(d)  
16 List, but another category for those waters that are  
17 listed for mercury with atmospheric deposition.

18 MR. JOHN FORD: Okay. I guess remember it there was  
19 a provision where we could have a mercury  
20 implementation strategy or something like that --

21 CHAIRMAN HARDECKE: Right.

22 MR. JOHN FORD: -- as opposed to a TMDL. John?

23 MR. JOHN HOKE: John Hoke, TMDL unit chief. Yeah.  
24 There was a provision a couple years back where EPA  
25 would allow states to list mercury in a separate

1 category, Category 5M of their integrated report, M  
2 for mercury, if the State had in place regulatory  
3 controls for mercury reduction from atmospheric  
4 sources.

5 At the time the proposal was offered to the  
6 states the Department looked at, you know, what  
7 regulatory controls do we have in place to control  
8 mercury? And out sided for a reasonable potential  
9 for municipal discharges and other industrial  
10 discharges from point source water perspective we  
11 really don't have any. And that the cost burden to put  
12 those in place in sort of an expedited fashion to  
13 take advantage of that Category 5M would be  
14 prohibitive.

15 Putting them in Category 5, the impaired waters  
16 list, gives the State eight to 13 years to develop  
17 implementation plans and put into place regulatory  
18 reductions not only for air permits and water  
19 permits, but things like, hazardous and solid waste  
20 like, you know, the mercury in your dental mouth and  
21 fillings and things from that nature. We had none of  
22 that in place. That in order for us to take  
23 advantage of that 5M, EPA would want documentation  
24 that we had those in sort of control some place and  
25 we just didn't at the time so we couldn't take

1 advantage of it unfortunately.

2 Bottom line it takes just about as much effort  
3 to write a TMDL mercury listings than it would be to  
4 get those -- those in place so at the time it felt --  
5 the Department believed that just keeping on the list  
6 was the best way to address those waters.

7 CHAIRMAN HARDECKE: So how do you write a TMDL for  
8 mercury?

9 MR. JOHN HOKE: We haven't quite gotten there yet,  
10 but we will eventually have to go through that  
11 process. They're scheduled far out on our schedule,  
12 I think, 2015-2016 is when we have it scheduled.

13 It's going to be -- it will probably be one  
14 person on my staff and then folks in other programs;  
15 Hazardous Waste, Air Pollution Control, Solid Waste.  
16 We'll have to identify all the sources and we're --  
17 you know, typically when we're dealing with water we  
18 can focus on waters and not nonpoint sources from  
19 water perspective for a TMDL for atmospheric deposition of  
20 mercury. We're going to have to pull in our Air  
21 Pollution Control colleagues, we'll have to pull in  
22 Solid Waste, Hazardous Waste and document all of  
23 those potential sources and then make recommendations  
24 on, you know, what reductions are needed from water;  
25 what reductions are needed from air; what reductions

1 are needed from solid and hazardous waste.

2 And then it will be up to the State to implement  
3 that through regulatory action, you know, potentially  
4 for voluntary self-compliance on things like dental  
5 offices or permits for generators of mercury and  
6 those sorts of things. It's going to be a complex  
7 process, I mean, we recognize that and we're going to  
8 need all the help from the stakeholders in this room  
9 as well as stakeholders in other programs to pull  
10 that off.

11 CHAIRMAN HARDECKE: Well, let's ask, John, how do you  
12 address that when it's atmospheric deposition?

13 MR. JOHN DeLASHMIT: There actually has been one,  
14 isn't it in Minnesota?

15 MR. JOHN HOKE: Minnesota did a mercury TMDL, but not  
16 a category 5.

17 MR. JOHN DeLASHMIT: Yeah. Not a Category 5.

18 That the opportunity to use Category 5 as John  
19 said comes with conditions and they think the  
20 Department made a decision that those conditions  
21 would just be too challenging to try to address.

22 But I would suggest, now, I haven't read the  
23 TMDL for mercury the State of Minnesota developed  
24 but, you know, that's -- that's one of the areas, I  
25 think, that perhaps you should look toward to see how

1 that was done 'cause it's not an easy thing to do.

2 As John said you're probably going to have to  
3 have metrological data, many things, source  
4 assessment that can cover a lot of different areas.  
5 So it's not going to be easy and we recognize that.

6 CHAIRMAN HARDECKE: So you will keep that in mind,  
7 right?

8 MR. JOHN DeLASHMIT: Yes, we will. We'll work with  
9 the Department on this.

10 COMMISSIONER TUPPER: Good luck.

11 MR. JOHN DeLASHMIT: Stand with our arms folded and  
12 tapping our foot waiting for this TMDL. So I have a  
13 feeling that reviewing it will be just as challenging  
14 as writing it as well.

15 CHAIRMAN HARDECKE: Thank you.

16 MR. JOHN DeLASHMIT: You're welcome.

17 CHAIRMAN HARDECKE: Okay.

18 **COMMISSIONER TUPPER: Mr. Chairman, I move that the**  
19 **Commission approve Attachment 2, a clean copy of the**  
20 **proposed 2012 303(d) listing methodology document as**  
21 **is or with any changes deemed necessary, which are**  
22 **none I guess.**

23 **COMMISSIONER EASLEY: Second.**

24 **COMMISSIONER PARNELL: It was Easley.**

25 **CHAIRMAN HARDECKE: Please take the vote, Malinda.**

1 MS. MALINDA STEENBERGEN: Commissioner Tupper?

2 COMMISSIONER TUPPER: Yes.

3 MS. MALINDA STEENBERGEN: Commissioner Parnell?

4 COMMISSIONER PARNELL: Yes.

5 MS. MALINDA STEENBERGEN: Commissioner Easley?

6 COMMISSIONER EASLEY: Yes.

7 MS. MALINDA STEENBERGEN: Chair Hardecke?

8 CHAIRMAN HARDECKE: Yes.

9 Okay. Tab No. 4 the State Revolving Fund, Doug.

10 MR. DOUG GARRETT: Morning. I'm Doug Garrett with  
11 the Financial Assistance Center. The draft of the  
12 2011 Clean Water State Revolving Fund Intended Use  
13 Plan was placed on public notice June 4th, 2011.  
14 Public comment period ended on July 14th. I'm sorry  
15 place on public notice June 4th, 2010.

16 A number of comments were received, however, the  
17 most significant comments related to the  
18 administration fee and the limited availability of  
19 funds. Comments on the increase of the  
20 administration fee from one-half to a full percent  
21 indicated that, you know, some of the comments  
22 related to large communities feeling that half  
23 percent increase would mean that they would be able  
24 to go to the market for better deals.

25 The other comment related at the other end of

1 the spectrum for small communities that they may very  
2 well make the project unaffordable. We, as staff, in  
3 reviewing those comments and looking at our projects  
4 do not believe that the increase at this time will be  
5 detrimental to the program.

6 However, we will, you know, continue to evaluate  
7 the fees in years ahead and should it become  
8 necessary to make any adjustments down the road we  
9 will certainly entertain that and bring it before the  
10 Commission.

11 The other comments relating to the limited  
12 availability of funds; as you may recall we had a  
13 very successful leveraging program up until the fall  
14 of 2008-- that was when we did our last leveraged  
15 closing. We had been working with the Environmental  
16 Improvement and Energy Resources Authority as well as  
17 members of our finance team to develop a program in  
18 which we could continue to leverage.

19 In fact, we have been just every few days seem to have  
20 conference calls now with our finance team to have a bond sale  
21 with the EIERA this fall, looking at the projects we have funded  
22 to date the mechanics of that deal it appears at this time that we  
23 will be able to fund the contingency projects, we will fund

24 (Tape One, Side A and B concluded.)

25 MR. DOUG GARRETT: -- most if not all of them. So we

1 are excited we are pursuing that and should that come  
2 to fruition we may very well need to have a special  
3 Commission meeting either through a conference call  
4 to move projects from that contingency list to the  
5 fundable list. We are not proposing at this time to  
6 make that jump until we can get some better hard  
7 numbers.

8 We also received a specific comment from the  
9 Little Blue Valley Sewer District who has two  
10 projects that they will be looking to do down the  
11 road. The one that is critical at this point to the  
12 Sewer District is what they call their Middle Big Creek  
13 Project. They had proposed phasing their project  
14 should funds be limited so that they could, you know,  
15 begin that project to meet their schedule.

16 And we have, in discussions with the district,  
17 have decided to leave their project as listed on the  
18 contingency list for that full amount of \$37 million  
19 and make an adjustment at the time that we would  
20 actually do funding for that project if it is  
21 necessary.

22 We've also made some minor editorial revisions  
23 to the IUP, which as much as we try to catch all the  
24 -- all the mistakes. There are a few that will  
25 crop up. The -- we have also made some project

1 revisions. The City of Brashear we had every  
2 intention of funding that through separate State  
3 programs this fall due to some easement acquisition  
4 issues they will not be able to proceed with State  
5 funding so we have moved them to our disadvantage  
6 community listing.

7 We have also received three applications during the  
8 public comment period. Those three are the Upper  
9 White River Basin Watershed Improvement District  
10 sponsoring a project for the River Downs West  
11 Subdivision. The IUP in your packet shows them as  
12 being placed on the planning list for \$798,880.

13 Second project was Metropolitan St. Louis Sewer  
14 District for their Bond Place project that is for  
15 improvement district that has a few homes interested  
16 in on-site systems and those that have sewers those  
17 sewers are great need of repair. That project has  
18 also been placed on the planning list for \$111,000.

19 And finally Boone County Regional Sewer District  
20 had a project, University Estates and Arrowhead Lake  
21 Estates for \$489,221. That project we do have the  
22 facility plan in. The District does have a bond  
23 issue in place. We propose that that be placed on  
24 the fundable/contingency list.

25 We also have due to the -- the scarcity of funds

1 we've had a number of projects that went ahead and  
2 proceeded to secure funding outside of the SRF. The  
3 City of Union they had two projects on our  
4 contingency list both of those have been removed.  
5 Seneca we were able to fund that project through our  
6 State water pollution control bonds. Jefferson City  
7 they funded their project with Buy America Bonds.  
8 And Piedmont secured lease-purchase financing. And  
9 the City of Higginsville has also secured funding and  
10 it's my understanding that they have actually begun  
11 construction on their project.

12       There are two items that were brought to my  
13 attention after the Commission packet was put  
14 together. Those changes on Page 478 of your packet  
15 we have the fiscal year 2011 source of distribution of  
16 funds. In your packet you'll note that that says  
17 those funds are as of December 31st, 2009. It's  
18 actually, should be June 30th, 2010.

19       And then we also have the City of Taos who was  
20 incorrectly listed with having priority points of 55  
21 and it should have been 80. We were all aware of that,  
22 just failed to make that change on Page 492 of your  
23 packet on the Non Point Source Direct Loan list.

24       And we are requesting that the Commission adopt  
25 the IUP as presented with making the correction to

1 the Taos priority points as well as correcting the  
2 date on the distribution of the capitalization grant  
3 and loan repayment funds to June 30th, 2010.

4 Are there any questions?

5 COMMISSIONER EASLEY: You have a section in here that  
6 I don't remember seeing before its called nonpoint  
7 source and green infrastructure demonstration grant.

8 MR. DOUG GARRETT: Yes, Commissioner, as part of the  
9 federal 2010 appropriation the language requires that  
10 the State look to provide funding for green  
11 infrastructure projects.

12 So it -- we had been working with both the Ozark  
13 Clean Water Company to do some nonpoint source  
14 projects down in Stone County to get a, basically,  
15 look at these centralized wastewater systems there.  
16 And then we've also been working with the Taney County  
17 group to develop a Class A regional biosolids  
18 facility to serve a number of communities around the  
19 -- the lakes there in Taney County.

20 The projects, these two specific projects, we  
21 have wrestled with several issues. The Ozark Clean  
22 Water Company under the normal SRF program for nonpoint  
23 source projects they were unable to, working with us,  
24 develop a method to secure the loan funding for the  
25 project.

1           The Taney County project they were requesting  
2    early on approximately \$10 million in grant funds;  
3    two million from our State Forty Percent Grant  
4    program with the balance through a federal earmark  
5    program. The -- what they were hoping at that time was to  
6    get our approval for the \$2 million in Forty Percent  
7    Construction Grant Program and then use that to leverage  
8    Congress, basically, to secure a special  
9    infrastructure grant from them.

10           Though both the Commission at those  
11   presentations as well as Staff did not believe that  
12   that was a wise use of funds to provide 100 percent  
13   grant for a project. That they needed, basically, to  
14   have some of their own funds in that project even  
15   though we did feel it was a very worthwhile project.

16           So in discussions with the Tri-Lakes folks in  
17   Taney County they were able to scale back their  
18   project to \$6 million to get it going. And, in fact,  
19   shortly after meeting in our offices with  
20   representatives from the county they went back and it  
21   was maybe 24 hours later, 48 at the most, we had  
22   written commitment from the Taney County Commission  
23   to devote \$3 million or 50 percent of the cost from  
24   their local funds.

25           We felt that was a very good, positive step on

1 their part. So that coupled with the funding that we  
2 were proposing coming out of the SRF to make the  
3 projects viable.

4 COMMISSIONER EASLEY: So Taney County funded it?

5 MR. DOUG GARRETT: They would put -- right --

6 COMMISSIONER EASLEY: Three million dollars?

7 MR. DOUG GARRETT: If you may recall under the ARRA  
8 program where we also had grant funding through the  
9 SRF we were requiring our recipients with the  
10 exception of our hardship communities to provide a 50  
11 percent match. We were not going to provide 100  
12 percent grant funding to communities. We carried  
13 that forward to this IUP when we learned that out of  
14 the federal appropriation 2010 grant funds would also be  
15 necessary.

16 So with those grant funds, you know, we say,  
17 okay, we're going to provide, you know, these grant  
18 funds but you're going to have to come up with the  
19 other 50 percent and that's what -- in both these  
20 cases they're doing.

21 Furthermore, with the green infrastructure  
22 requirement both of these projects would help us meet  
23 that requirement in that they would both be viewed as  
24 being green infrastructure.

25 COMMISSIONER EASLEY: Did you have other grant

1 requires for this particular section?

2 MR. DOUG GARRETT: Pardon?

3 COMMISSIONER EASLEY: Did you have other grant  
4 requests?

5 MR. DOUG GARRETT: No. No, sir.

6 COMMISSIONER EASLEY: It looks like you just sort of  
7 built this area just for these two projects.

8 MR. DOUG GARRETT: We had -- you are correct. We had  
9 been working with both Ozark Clean Water Company for  
10 a number of years to develop a nonpoint source  
11 program to address these centralized needs down there  
12 in Stone County. And, you know, through their good  
13 faith efforts and ours we just still could not bring  
14 something to fruition with these funds that were  
15 being made available -- you know, we had -- we still  
16 had - let me back up. We still had current  
17 applications for both these projects. So instead of  
18 placing them on the list to just receive a loan we  
19 shifted that over to grant. It was a conscious  
20 decision on our part.

21 Same thing with Taney County with the exception  
22 of we wanted them to, you know, go back and decide how much  
23 could they put forth and then we would match it with  
24 grant.

25 This does not necessarily satisfy our total

1 green requirement that's imposed by the feds. We  
2 will continue to work with other of our loan  
3 communities to identify green components within those  
4 projects.

5 CHAIRMAN HARDECKE: Now, do you have a green  
6 requirement on the SRF funds or just on the ARRA  
7 funds?

8 MR. DOUG GARRETT: On the 2010 SRF funds there is a  
9 green requirement.

10 COMMISSIONER EASLEY: What is that requirement?

11 MR. DOUG GARRETT: I know we put it in here.

12 It was not less than 20 percent of the  
13 capitalization grant, which was \$56 million. So we  
14 were reserving about \$11,296,000 to fund  
15 components of projects which incorporate  
16 green infrastructure.

17 Now, when we found out this requirement was  
18 going to be imposed upon us we had already received  
19 applications for the 2011 Intended Use Plan. And we  
20 have no doubt from EPA who awards our  
21 capitalization grant, for the 2010 capitalization  
22 grant there will be a condition in there that they  
23 will withhold these funds to -- until we demonstrate  
24 to them that we have made every possible effort to  
25 identify those green infrastructure components.

1           So as I say we'll be working with those loan communities as  
2 well to indentify, you know, what could be green.

3 COMMISSIONER TUPPER: So, basically --

4 CHAIRMAN HARDECKE: Is there a list of what's green?

5 MR. DOUG GARRETT: Pardon?

6 CHAIRMAN HARDECKE: Is there a list of what is green?

7 MR. DOUG GARRETT: There is guidance from EPA. There  
8 are some things that they determined categorically  
9 green in nature.

10 CHAIRMAN HARDECKE: Is that on Page 545?

11 MR. DOUG GARRETT: Yes, that's where it begins on Page 545.

12 MR. DOUG GARRETT: As an example if communities  
13 replace major pumps at a wastewater treatment plant  
14 we would expect that the pumps that are going in  
15 there that they're the new pumps so it would be more  
16 efficient than the pumps they're replacing; that by  
17 itself would not be green.

18           They would have to go to the next, you know,  
19 more efficient pump than what they would normally  
20 consider and they would have to demonstrate that energy  
21 savings for that pump. And then that would be  
22 evaluated by our engineering staff and then the  
23 determination made of it being green.

24 COMMISSIONER TUPPER: You know, like I said the last  
25 time, either a smart engineer or a devious engineer

1    however you want to look at it could almost make any  
2    project green if you've got no cost limitations.  And  
3    that's -- I think we need to guard against approving  
4    and funding projects that are a little flagrant.

5    MR. DOUG GARRETT:  Right.  And that's where our --  
6    our engineering review staff come into play.  You  
7    know, as part of the facility planning process, you  
8    know, we inspect those consultants -- we check to  
9    ensure that they are looking at what's the most  
10   cost effective for that -- that community, still  
11   meeting the work quality requirements that are  
12   needing to be met and then, you know, work with them  
13   like in the imminent, current situation we would then  
14   work with them say, okay, of what you're proposing  
15   here is any of this green?  Now, some of that --  
16   those consultants may already have in there just from  
17   the selection of what -- what they're doing.  If, you  
18   know, our engineering staff through those reviews would  
19   determine that they are, you know, using  
20   green infrastructure that's really inappropriate for  
21   a project then that would be certainly questioned.

22   MR. JOE BOLAND:  I'm Joe Boland with the Financial  
23   Assistance Center.  I think it's important to point  
24   out that as a stake -- State stakeholder we provided  
25   comments to EPA on multiple occasions on this green

1 component.

2           We're -- we've been working with it, but we're  
3 not necessarily happy with it. As a state we believe  
4 it's important for us to set the priorities on where  
5 this money goes. We don't -- we don't want to come  
6 across a case where -- you know, a green project that  
7 doesn't have the environmental impact that a, what we  
8 would call a regular concrete and steel project to  
9 take precedent over -- over the normal project.

10           So our engineering staff they do work very  
11 closely with these projects to make sure there isn't  
12 -- those issues that you're concerned about. I mean,  
13 we do -- we have very limited funding this year. We  
14 recognize that. We're working very hard to expand  
15 that amount of funding to -- through a new type of  
16 leveraged program, but we -- we do have to meet this  
17 20 percent requirement. And we, it may not be the  
18 right way to say this, but we do look for the low  
19 hanging fruit. The water efficiencies, the energy  
20 efficiencies even environmental innovation is one of  
21 the categories, but we're really looking for those --  
22 those -- those easier criteria to meet.

23           Now, on the drinking water side it's the same  
24 issue. And, you know, water loss is the easiest  
25 thing we -- we shoot for. It's very easy to prove.

1 It's the best thing we can do for our communities.

2 So that's -- we get credit for water efficiency.

3 On the wastewater side we look for the same  
4 types of things. And, you know, if we can reduce  
5 flow going to a treatment plant through some I & I-  
6 type projects we may be able to, you know, get credit  
7 for that just depending on the output of the plant in  
8 the end.

9 So, you know, again it -- we recognize this  
10 green infrastructure component is in some ways it's  
11 kind of a challenge, but in other ways, like Doug  
12 said, we have a long list of projects. We work with  
13 those projects and grab every piece of green we can  
14 out of it. And we will -- we'll meet that 20 percent  
15 requirement I'm sure, so --

16 I don't know if that helps, but --

17 Yes.

18 CHAIRMAN HARDECKE: The Ozark Clean Water Company  
19 we've funded that before, right?

20 MR. JOE BOLAND: No, we haven't. And that's one of  
21 the reasons why. I'm glad you brought that up. The  
22 --

23 CHAIRMAN HARDECKE: Well, -- who is -- what was Dave  
24 Casaletto's thing?

25 MR. JOE BOLAND: That is -- that is Mr. Casaletto's

1 project. And what -- what Doug referred to earlier  
2 we -- we could never make a connection with --  
3 through the loan program, through the traditional  
4 loan program. That's why we're taking our limited  
5 grant dollars and we want to put it towards some of  
6 these special nonpoint source projects --

7 CHAIRMAN HARDECKE: I thought we funded that once before?

8 MR. JOE BOLAND: He was on the list. He was  
9 fundable, but we -- the typical nonpoint source-type  
10 project that we want to fund has no revenues  
11 associated with it. I mean, if you look at the  
12 classic 319 projects there are no revenues. It's an  
13 educational component. You're buying a piece of  
14 property to take out of production, you know,  
15 riparian protection so there's -- there's no  
16 user rate associated with that to pay back a loan to  
17 us.

18 We recognize that and that's why we're putting  
19 this money towards this pilot group of projects. We  
20 really want to get something off the ground doing on-  
21 site replacement. We just haven't been able to up to  
22 this point. And a lot has -- most of that has to do  
23 with capitalizing the project. If -- if, you know,  
24 Mr. Casaletto if -- starting out there are no  
25 revenues associated with -- with this project. So we

1 need -- we need to capitalize this to some extent to  
2 get it to a point where it's self-revolving and that  
3 -- that's why we've kind of made this shift.

4 And I do -- Commissioner Easley, your original  
5 comment, I think, I want to make sure you are aware -  
6 - this was in the original IUP as presented for a  
7 public hearing and public comment originally. So I -  
8 - I just want to make sure you didn't think this was  
9 put in afterwards. It has been here since the public  
10 hearing process. Just want to make sure of that.

11 But, again, we're -- we really want to try and  
12 get something -- get something rolling especially on  
13 the on-site projects. We recognize it as a problem  
14 throughout the State. Southwest has really focused  
15 on it more especially Table Rock Water Quality, Inc.,  
16 they've done a lot of work down there already. And  
17 we -- we would really love to get some kind of self-  
18 revolving fund set up as a pilot to see if we can use  
19 that as a model across the State, so --

20 CHAIRMAN HARDECKE: Questions?

21 (No response.)

22 CHAIRMAN HARDECKE: We've got a card, Phil Walsack.

23 MR. PHIL WALSAK: I see Ms. Tippet Mosby here and  
24 there's going to be a question posed to her in a  
25 moment.

1           0.5 percent, now, we're raising that to 1  
2 percent. I talked at length about this last meeting.  
3 How is it fair that in Owensville I have a drinking  
4 water project my interest rate is -- my admin fee is  
5 0.5 percent, but if I have a wastewater project it's  
6 1 percent?

7           How is it fair and equitable to the citizens in  
8 Missouri that they're going to carry -- that St.  
9 Louis MSD is going to carry an extra half a percent,  
10 50 basis points for a project this year? Why is it  
11 fair that the City of Joplin must fund additional  
12 fees to the Department? Why aren't we talking about  
13 the fairness and equity of this approach?

14           There are political implications buried in this  
15 number and I'd really like to hear what they are  
16 because these are -- these are real numbers to real  
17 ratepayers. And if we want to raise 1 percent across  
18 the board for drinking water and wastewater then so  
19 be it. But shielding one while exposing another is  
20 bad public policy and it sets as Mr. Easley brought  
21 up earlier today a bad precedent. I don't understand  
22 why we're doing this.

23           I want to hear from the Department why we're  
24 willing to risk political capital as well coming into  
25 January when we discuss clean water fees. I want to

1 understand why the Department believes this is a good  
2 move at this time.

3 Thank you.

4 CHAIRMAN HARDECKE: Leanne?

5 MS. LEANNE TIPPETT MOSBY: Good afternoon,  
6 Commissioners, members of the audience, Mr. Walsack.  
7 I'm not John, but my name is Leanne Tippett Mosby. I  
8 am the Acting Division Director for the Division of  
9 Environmental Quality for the Department. And I do  
10 appreciate Mr. Walsack's concerns.

11 It's certainly not an ideal situation that we  
12 are looking to increase this administrative fee, but  
13 as the Commission is aware we were unsuccessful in  
14 our recent attempt to get our water pollution fees  
15 extended. The legislation that we had, failed right  
16 at the end of the session so we've been faced with  
17 many difficult decisions over the past several years,  
18 frankly, we've been working for a number of years  
19 with our stakeholders in an effort to try to get our  
20 fees restructured and -- so that we can operate an  
21 adequate program.

22 We believe that Missouri is the right place to  
23 house the program in the State of Missouri as opposed  
24 to allowing this program to return to the  
25 Environmental Protection Agency and we've been faced

1 with some -- some, frankly, very difficult decisions  
2 throughout the Division of Environmental Quality  
3 including laying off staff.

4       It's not a decision we took lightly, but because  
5 we looked high and low for any place where we could  
6 increase our revenues and decrease expenditures in an  
7 order that we can continue the program. I would  
8 point out that -- you know, that -- that  
9 municipalities do not have to avail themselves of  
10 this program. They're, you know, they -- it's not a  
11 -- it's not mandatory that they seek funding from the  
12 SRF.

13       I would also point out that if we don't have a  
14 Water Protection Program in the State of Missouri we  
15 won't have an SRF program at all. So, you know, that  
16 may -- if our revenue situation improves in the  
17 future, if we're able to get our revenues adjusted to  
18 the -- to the level that we need to carry out all our  
19 responsibilities then this might be an issue that we  
20 can revisit.

21       Again, I guess, the simplest answer is it was  
22 very -- a decision that we didn't take lightly, but  
23 is something we felt we had to do in combination with many  
24 other things. You know, another thing that we're  
25 doing for instance is we're trying to improve our

1 cost recovery efforts in terms of when we have  
2 enforcement cases that take an extraordinary amount  
3 of time. We're trying to -- to make sure that we  
4 capture those costs so that we can recovery those  
5 costs from the entities in question. So this is just  
6 part of a number of measures that we're taking.

7 And unless you have any questions for me, that's  
8 what I have -- I'll conclude.

9 CHAIRMAN HARDECKE: Thank you.

10 **COMMISSIONER PARNELL: I would move that we adopt the**  
11 **2011 Clean Water State Revolving Fund Intended Use**  
12 **Plan as presented.**

13 **COMMISSIONER EASLEY: Second.**

14 **CHAIRMAN HARDECKE: Malinda, take the vote, please.**

15 **MS. MALINDA STEENBERGEN: Commissioner Parnell?**

16 **COMMISSIONER PARNELL: Yes.**

17 **MS. MALINDA STEENBERGEN: Commissioner Easley?**

18 **COMMISSIONER EASLEY: Yes.**

19 **MS. MALINDA STEENBERGEN: Commissioner Tupper?**

20 **COMMISSIONER TUPPER: Yes.**

21 **MS. MALINDA STEENBERGEN: Chair Hardecke?**

22 **CHAIRMAN HARDECKE: Yes.**

23 I think the time has come for lunch. We'll  
24 reconvene at one o'clock.

25 **MS. JENNIFER FRAZIER: Can you vote to go into closed**

1 session?

2 CHAIRMAN HARDECKE: Yes.

3 (Vote taken for closed session all - Yes) (Break in proceedings.)

4 MS. JENNIFER FRAZIER: Can you -- now, is the mic on?

5 Okay.

6 Hello. Okay. Thank you. All right. I'll

7 start over. My name is Jenny Frazier with the

8 Attorney General's Office. I'm here to present **Tab**

9 **No. 5**, which is a permit appeal by the **City of**

10 **Jasper**. They were appealing the specific term of

11 their permit requiring a Class C certified operator.

12 There was a hearing held on October 26th of

13 2009. Assistant Attorney General, Tim Duggan,

14 represented the Department and he is here and I'm

15 going to let him answer any questions and give you

16 any factual information that he needs to.

17 I'm simply going to remind you that under

18 621.250 your decision must be based only on the facts

19 and evidence in the hearing record and you've been

20 given a copy of that record. You have three options.

21 The first is to adopt the recommendation of the

22 Administrative Hearing Commission as your final

23 decision. You can change a finding of fact or

24 conclusion of law or you may vacate or modify the

25 recommendation by the AHC, but if you do so you must

1 state in writing the specific reason for the change.

2 So with that I'll turn it over to Tim and he can  
3 answer any specific questions you might have and make  
4 a final statement.

5 MR. TIM DUGGAN: Good afternoon. My name's Tim  
6 Duggan I'm with the Attorney General's Office. I  
7 just want to make sure have we heard from the City of  
8 Jasper; is anyone here for them?

9 (No response.)

10 MR. TIM DUGGAN: They were represented by counsel at  
11 the hearing, but Mr. James Spradling passed away in  
12 August and his estate notified the Administrative  
13 Hearing Commission that he -- his firm was  
14 withdrawing from the case. The initial appeal was  
15 filed by the mayor so I thought he might be here to  
16 speak for the City.

17 The case, it's pretty straight forward. The  
18 difference between a Class C and Class D operator for  
19 this particular wastewater treatment facility is 1.28  
20 points according to a guideline that you had  
21 promulgated as a rule, a point system for evaluating  
22 the level of wastewater treatment operator that is  
23 required to run the system for a particular plant.  
24 It's from D to A. A is the most challenging, D is  
25 the least challenging.

1           Before this permit was issued wastewater  
2 treatment operator status was not included in  
3 permits. This was sort of an evolving process and  
4 when this permit was issued effective April 25th,  
5 2008, the permit did include the wastewater  
6 certification requirement.

7           The City had been operating a single cell lagoon  
8 with a Class D operator for years. They replaced  
9 that lagoon with what was called a Lemna System.  
10 Lemna being the company that developed it. It's in this  
11 case a two component partial mix aerated facultative  
12 three cell basin with hydraulic baffles. And  
13 attached to that is a covered anaerobic settling  
14 basin.

15           Now, on your point system under the -- when this  
16 permit was first put out on public notice the -- the  
17 system received eight points for the -- the technical  
18 components of the system, which was based an aerated  
19 lagoon. But the Staff before they issued the final  
20 version of the permit added two points for the  
21 settling basin that was put of the Lemna System. And  
22 they called that an advanced polishing treatment  
23 cell.

24           Those two points would make the difference  
25 between a Class C and Class D operator of course.

1 And the case really came down to a matter of -- of  
2 logic. And the Administrative Hearing Commission  
3 acknowledges the logic of the City's position which  
4 is, you know, that's a very efficient, user-friendly  
5 system and, frankly, it doesn't necessarily require  
6 anybody more trained than a Class D operator.

7 The Class D operator who took care of our single  
8 cell lagoon can certainly take care of this system  
9 it's a matter of throwing a switch to turn on an  
10 aerator now and then. And it's just no more  
11 complicated than that so why should we have to  
12 upgrade the -- the operator's status?

13 But the AHC also recognized the logic of the  
14 Department's position, which is you don't just look  
15 at how complicated it is to manage your particular  
16 wastewater treatment plant. You also look at the  
17 fact that this plant is designed to and capable of  
18 producing a higher quality effluent for the receiving  
19 stream than that -- that previous system. The  
20 previous system was -- was basically a lagoon that  
21 collected sludge and then they used the wastewater  
22 and sludge for fields. They just irrigated fields  
23 with it, whereas, this is a discharge system. And  
24 the limits for this particular system were tighter  
25 than the -- the old system.

1           So the Administrative Hearing Commission said,  
2 well, when you look at the fact that first of all  
3 that advanced polishing cell or that advanced  
4 treatment cell that doesn't require any particular  
5 attention in its own right that's attached to the  
6 whole system is intricate part of making sure that  
7 the effluent meets the -- the tighter limits in the  
8 permit. And, therefore, in that sense it is an  
9 advanced polishing pond because without it the -- the  
10 system would not be as affective. And the only other  
11 thing you can go do to get the same quality of  
12 effluent would be an activated sludge facility. And  
13 an activated sludge facility would merit 15 points on  
14 that same guideline as opposed to the two additional  
15 points added to the eight for the initial aerated  
16 lagoon plus two for the mechanical components and the  
17 quality of the effluent that you are to produce.

18           So the Administrative Hearing Commission found  
19 that the Department did not in any way abuse its best  
20 professional judgment in the way they evaluated this  
21 system. And the ten points was supported by the  
22 evidence in the testimony of the engineer from the  
23 regional office who explained the -- how he arrived  
24 at that -- that conclusion.

25           The other component to the appeal was worth

1 three points on that same scoring system. And the three  
2 points relate to the classification of the receiving  
3 stream, which is Possum Creek. Possum Creek is by  
4 default considered suitable for whole body  
5 recreational use and a recent Use Availability  
6 Analysis by the Department conducted in about May of  
7 2007 did not rebut the whole body contact  
8 recreational use, which is deemed to be the  
9 appropriate beneficial use of this particular stream.  
10 In this particular issue the City's argument amounted  
11 to questioning whether or not the UAA that the  
12 Department conducted was perhaps less conclusive than  
13 it might have been because they argued with the  
14 rainfall data that immediately proceeded the  
15 evaluation of this particular stream.

16       Theirs was more localized. They had gone with  
17 rain gauges that they monitor on a regular basis  
18 whereas the Department had gone with a greater  
19 regional-wide approach based on information from the  
20 -- from NOAA and the weather service and so forth.  
21 And there was a discrepancy on how much rain had  
22 fallen or not. But John Hoke had provided us  
23 evidence that in evaluating the stream the contractor  
24 who conducted the UAA study had followed the training  
25 and had followed the appropriate protocol. And the

1 pictures taken of the stream segment were consistent  
2 with a stream that was not at flood conditions and  
3 had not been immediately at flood conditions before  
4 the study. And, therefore, it was considered at base  
5 flow. And if it was considered at base flow then the  
6 UAA did not rebut the presumption of whole  
7 recreational use.

8       The Administrative Hearing Commission recognized  
9 that the UAA might have been inconclusive with  
10 respect to that question of the base flow, but in  
11 order to take off the three points you would need a  
12 UAA that conclusively rebuts the whole body contact  
13 designated use and it would require a change of the  
14 rule of this Commission in order to implement a re-  
15 designation of that -- that stream. Since those  
16 things had not occurred then the three points were  
17 appropriately assessed. The Commission recognized  
18 its limitation of its own authority it could not  
19 order a new UAA. It doesn't have the authority to do  
20 that nor is it necessarily supported by the evidence  
21 that a new UAA is required under these circumstances.  
22 But nothing prevents a city from conducting its own  
23 UAA and at some point rebutting that presumption. By  
24 then, however, many years down the road we are there  
25 may be other changes, however, to their system that

1 would still require a Class C operator.

2 But the bottom line is they challenged five of  
3 the points on that scale and the Administrative  
4 Hearing Commission recommends that the five points  
5 were properly assessed and recommends that you let  
6 the permit stand with a Class C operator requirement  
7 that is contained therein.

8 And since the Administrative Hearing Commission  
9 agreed with our arguments, of course, I would urge  
10 you to adopt their recommendation.

11 Now, are there any questions?

12 CHAIRMAN HARDECKE: Questions?

13 COMMISSIONER TUPPER: I have a lot of questions, but  
14 in deference to Mr. Parnell's schedule I'll --  
15 (Laughter.)

16 COMMISSIONER TUPPER: -- it's -- a lot of things  
17 wrong with this one, I think, but I will vote. We  
18 can move on.

19 CHAIRMAN HARDECKE: Once again is there anybody here  
20 from the City of Jasper?

21 (No response.)

22 COMMISSIONER TUPPER: I would like later in the  
23 meeting to ask John some questions.

24 CHAIRMAN HARDECKE: Okay.

25 COMMISSIONER TUPPER: John Hoke.

1 CHAIRMAN HARDECKE: Okay.

2 COMMISSIONER EASLEY: I move that the Commission  
3 adopt the Administrative Hearing Commission's  
4 recommendation.

5 COMMISSIONER PARNELL: Second.

6 CHAIRMAN HARDECKE: Malinda, take the vote, please.

7 MS. MALINDA STEENBERGEN: Commissioner Tupper?

8 COMMISSIONER TUPPER: Yes.

9 MS. MALINDA STEENBERGEN: Commissioner Parnell?

10 COMMISSIONER PARNELL: Yes.

11 MS. MALINDA STEENBERGEN: Commissioner Easley?

12 COMMISSIONER EASLEY: Yes.

13 MS. MALINDA STEENBERGEN: Chair Hardecke?

14 CHAIRMAN HARDECKE: Yes.

15 Okay. We're going to move to **Tab No. 6** and then  
16 we will take -- have Tab No. 9 next in consideration  
17 that Commissioner Parnell has to leave at two o'clock  
18 so we're going to try and take care of the tabs that  
19 need a vote before he leaves. So Tab No. 6.

20 MS. EMILY LYON: My name's Emily Lyon in the  
21 Financial Assistance Center in the Department. I'm  
22 here to talk about the engineering reports, plans and  
23 specifications rule of Chapter 8, Rule 110. It has  
24 -- this rule in particular has not been revised since  
25 it was implemented back in the '70s. We're basically

1 updating it to be in line with the Ten State  
2 Standards which we are a member state of and they're  
3 a national recognized standard.

4 This rule is not an environmental standard or  
5 condition. We're not establishing any of those.  
6 It's just an administrative rule to update the  
7 standards to current practice. But we did draft an  
8 RIR, Regulatory Impact Report, for the public and  
9 that was on notice from May 17th to July 16th, 2010.  
10 We did receive one comment from the Department of  
11 Health and Senior Services.

12 And they basically wanted us to require a --  
13 that all facility plans and engineering reports to  
14 look at a decentralized concept as one of the  
15 alternatives. But we felt that this rule pertains to  
16 facilities 100,000 gallons per day or greater. And  
17 at that size we didn't believe it was necessary to  
18 require them to meet at that decentralized concept.  
19 We're not saying that they can't look at it. They're  
20 more than welcome to evaluate that alternative. We  
21 just felt that's probably a requirement more suited  
22 for our smaller flow facilities.

23 We did, also, put together private and public  
24 fiscal notes and we based those on the average  
25 construction permits that we receive and then how

1 much time we thought the Department and consultants  
2 would spend reviewing those to get accustomed to the  
3 new regulations. We didn't feel like it would take a  
4 lot of time for consultants to get a handle of this  
5 new regulation. There is a small learning curve, but  
6 some facilities are already required to do these  
7 things so it shouldn't be a big adjustment. And so  
8 we determined that there would be some costs, but  
9 after about three years really there shouldn't be  
10 really anymore cost because everyone should be up on the  
11 new regulation.

12 The finding of necessity was approved and signed  
13 in the March Commission meeting and we do have a  
14 public hearing expected on the rule at the January  
15 Commission meeting. And I would just like to  
16 recommend that the Commission proceed with filing the  
17 proposed rule, and publish it in the Missouri register. Do you  
18 have any questions?

19 (No response.)

20 CHAIRMAN HARDECKE: Questions?

21 (No response.)

22 **COMMISSIONER EASLEY: I would like to make a motion**  
23 **that the Commission -- or I'll move that the**  
24 **Commission approve the request to file a proposed**  
25 **rule amendment to 10 CSR 20-8.110.**

1 COMMISSIONER TUPPER: Second.

2 CHAIRMAN HARDECKE: Malinda, take the vote, please.

3 MS. MALINDA STEENBERGEN: Commissioner Parnell?

4 COMMISSIONER PARNELL: Yes.

5 MS. MALINDA STEENBERGEN: Commissioner Easley?

6 COMMISSIONER EASLEY: Yes.

7 MS. MALINDA STEENBERGEN: Commissioner Tupper?

8 COMMISSIONER TUPPER: Yes.

9 MS. MALINDA STEENBERGEN: Chair Hardecke?

10 CHAIRMAN HARDECKE: Yes.

11 Okay. We'll move to **Tab No. 9**.

12 COMMISSIONER PARNELL: There's no legal action today?

13 I don't see any legal --

14 COMMISSIONER TUPPER: No.

15 MR. JOHN RUSTIGE: Good afternoon, Commissioners. In

16 February the **Empire District Electric Company**

17 submitted a complete variance application for their

18 Asbury Plant. They're seeking a variance for a

19 period of five years from applicable Water Quality Standards

20 for sulfate and chloride for discharge to Blackberry Creek

21 (Tape Two, Side A concluded.)

22 MR. JOHN RUSTIGE: -- tributary to the Spring River

23 in Jasper County. The cooling water is supplied from

24 deep wells that contain high, natural sulfate and

25 chloride levels. The cooling water discharge has

1 frequently shown concentrations that exceed the Water  
2 Quality Standard of 1,000 milligrams per liter.  
3 Blackberry Creek is impaired for sulfite and chloride  
4 and is on the 303(d) List. Empire District has  
5 conducted an assessment of the aquatic community in  
6 Blackberry Creek and their assessment concludes that  
7 it compares favorably to communities found in control  
8 streams.

9 They have also conducted whole effluent toxicity  
10 testing using both fathead minnows and Daphnia. And  
11 the tests show that the effluent passes the chronic  
12 or the seven day test. The water has a high level of  
13 hardness and that really reduces the toxic affects of  
14 these pollutants.

15 Empire District did receive a previous variance  
16 for this situation. The previous variance required  
17 Empire to conduct a preliminary review of technical  
18 options to address the situation and they -- they did  
19 conduct that review and looked at various  
20 technologies, but they weren't able to identify an  
21 approach that was cost effective. At the May 6th  
22 Commission meeting I presented a preliminary variance  
23 to the Commission and the variance was subsequently  
24 put on public notice. The public notice was  
25 published on July 22nd and that period closed August

1 22nd. Empire District provided several comments  
2 during that comment period and we've prepared a  
3 recommendation on the variance as required by the  
4 statute.

5 This recommendation has been modified from what  
6 was originally published in the briefing document  
7 because we addressed some of those comments after the  
8 briefing document was finalized. So you'll find the  
9 final variance recommendation in your blue packet.

10 So I offer the following findings. There are  
11 high natural background concentrations of sulfites  
12 and chlorides in the water used for cooling water.  
13 The previously mined land in the vicinity further  
14 increases sulfite and chloride levels. During the  
15 current period in which the District operated  
16 under the variance they have investigated the options  
17 to meet appropriate effluent concentrations. These  
18 technologies have been identified as technically  
19 feasible, but not cost effective.

20 During the current variance period Empire  
21 District has not developed site specific water  
22 quality criteria that could be incorporated into  
23 Missouri's Water Quality Standards. And I also note  
24 that no adverse effects have been noted while  
25 conducting these chronic wet tests. So given those -

1 - those findings staff would recommend the approval  
2 of the variance with a set of conditions.

3 Staff recommends that by October 16th, 2010,  
4 Empire District submit to the Department a draft  
5 quality assurance project plan for the collection of  
6 data and a detailed method for the development of  
7 site specific water criteria for sulfites and  
8 chlorides in Blackberry Creek. The Department shall  
9 review this draft plan within 30 days and provide  
10 recommended modifications for consideration.

11 Both the Department and Empire will coordinate  
12 with and request comments from U.S. EPA regarding the  
13 acceptability of this draft plan for data collection  
14 and interpretation in order to develop a site  
15 specific water quality criteria. Empire District  
16 shall provide responses to comments and produce a  
17 final quality assurance project plan within 30 days  
18 of receipt of all written comments.

19 The Department shall review the final plan and  
20 make a determination at that point whether to proceed  
21 with formal development of site specific water  
22 quality criteria. Empire District shall continue to  
23 conduct the whole effluent toxicity testing as  
24 required in their current permit.

25 If the Department determines that site specific

1 criteria is feasible then Empire District shall  
2 initiate the study within 45 days of approval begin.  
3 It's the intention of the Department then to  
4 incorporate the results of that study into the next  
5 triennial review and into the next rulemaking that's  
6 associated with that review. By March 15th, Empire  
7 District shall review the data, by March 15th of  
8 2011, and provide preliminary site specific criteria  
9 for sulfites and chlorides as well as other  
10 information necessary for the Department to develop a  
11 Regulatory Impact Report.

12 Empire District then shall complete the study by  
13 October 16th, 2011, and the Department then intends  
14 to use the results of that study and roll that  
15 information into the rulemaking. That rulemaking is  
16 scheduled for proposal March 12th, 2012, with an  
17 effective date of December 31st, 2012. And then upon  
18 the effective date of that rule Empire is required to  
19 meet the applicable Water Quality Standards and the  
20 variance then will be terminated.

21 If, however, the Department determines that it's  
22 not feasible to develop a specific Water Quality  
23 Standard, site specific water quality criteria, the  
24 Department shall notify Empire District and the  
25 Asbury Plant will be required to meet the current

1 applicable Water Quality Standard for sulfites plus  
2 chlorides within three years of notice and no later  
3 than October 16th, 2016. This deadline provides the  
4 necessary time to meet those limits from the time  
5 that we make a decision on whether a site specific  
6 water quality criterion is feasible.

7 So with that I would recommend that the  
8 Commission approve this variance with the conditions  
9 that I presented. The variance will supersede the  
10 existing variance and become effective once approved.

11 Questions?

12 (No response.)

13 CHAIRMAN HARDECKE: Any questions?

14 (No response.)

15 CHAIRMAN HARDECKE: Trent Stober.

16 MR. TRENT STOBER: Commissioners, Trent Stober with  
17 Geosyntec representing Empire District Electric  
18 Company. We also have several representatives from  
19 Empire District if you have any more questions and so  
20 forth and want any clarifications.

21 Just one thing to go on record that this is not  
22 just about costs that there is negative secondary  
23 impacts that I know -- well, that are -- are from the  
24 southwestern part of our State recognized and the --  
25 the potential for groundwater depletion if the Water

1 Quality Standards as is are intended to be met.  
2 Essentially the most viable, most technically  
3 achievable and cost effective means to -- to meet the  
4 standards are to essentially pump additional  
5 groundwater out of -- out of the groundwater source  
6 for the cooling water to essentially dilute the  
7 chlorides and sulfates within the effluent. So with  
8 that I -- we have appreciated the Department's  
9 willingness to work collaboratively with this and  
10 expect that to be the case going forward, you know,  
11 there's -- there's statements about feasibility of --  
12 of developing the site specific criteria and approval  
13 from DNR along the way. And we just hope that we can  
14 work collaboratively with the Department to ensure  
15 that we get a result that's technically defensible  
16 and sound as well.

17 And then, also, it's clear that this variance  
18 begins and supersedes the last so that we have a  
19 continuous chain of protection from the two  
20 variances. Have any questions?

21 (No response.)

22 CHAIRMAN HARDECKE: Thank you.

23 **COMMISSIONER TUPPER: Mr. Chairman, I move the**  
24 **Commission approve with the variance request with the**  
25 **conditions placed on it by the Staff.**

1 COMMISSIONER PARNELL: Second.

2 CHAIRMAN HARDECKE: Malinda, take the vote, please.

3 MS. MALINDA STEENBERGEN: Commissioner Easley?

4 COMMISSIONER EASLEY: Yes.

5 MS. MALINDA STEENBERGEN: Commissioner Tupper?

6 COMMISSIONER TUPPER: Yes.

7 MS. MALINDA STEENBERGEN: Commissioner Parnell?

8 COMMISSIONER PARNELL: Yes.

9 MS. MALINDA STEENBERGEN: Chair Hardecke?

10 CHAIRMAN HARDECKE: Yes.

11 We'll go back to No. 7. Okay. Now, **Tab No. 7.**

12 COMMISSIONER TUPPER: Drive careful.

13 MR. JOHN HOKE: Mr. Chairman, thank you,

14 Commissioners. Again, my name is John Hoke. I'm the

15 TMDL unit chief of the Water Protection Program. I'm

16 also the Water Quality Standards coordinator for the

17 2012 Water Quality Standards review. And Tab No. 7

18 before you on Page 647 of your packet, I'm presenting

19 today draft rule language that applies designation to

20 fishable/swimmable uses to currently unclassified

21 waters.

22 In September 2000 U.S. Environmental Protection

23 Agency had determined that Missouri's Water Quality

24 Standards do not fully implement the

25 fishable/swimmable use designations required by

1 Section 101A of the -- of the federal Clean Water  
2 Act. As promised at the July, I think, it's 14th  
3 meeting we are providing draft rule language to you  
4 today that we believe applies the designation of  
5 fishable/swimmable waters in such a way that to  
6 currently unclassified waters that satisfies the  
7 section 101A criteria both by the Clean Water Act on  
8 -- and the rule in your package is essentially  
9 unchanged with the exception of a couple of areas  
10 that -- that apply to the designation of uses.

11 I direct your attention to Page 653 of your  
12 packet. The Department has changed language under  
13 Subsection 2, designation of uses. In particular 2C,  
14 2D, 2E and 2K. Section 2C all perennial rivers and  
15 streams and intermittent streams with perennial pools  
16 shall support whole body contact recreation-Category  
17 B, secondary contact recreation, warm water aquatic  
18 community protection, human health protection and  
19 life cycle wildlife protection uses as defined  
20 earlier in the rule. And these uses are consistent  
21 with the presumptive beneficial use protection  
22 required by the Clean Water Act Section 101A(2).

23 We believe that that new language pulls in  
24 currently all the waters that are listed as  
25 classified in the rule. It applies to them because

1 that is -- this is essentially the procedure that the  
2 Department of Natural Resources and the Department of  
3 Conservation use to originally classify those waters  
4 along with some -- and their stream servers back  
5 in the '70s and '80s. As well as, we believe, this  
6 will pull in waters that may not necessarily fall  
7 into the second addition that we've made to the rule  
8 which is 2D. All waters specially represented by the  
9 1 to 100,000 scale Natural Hydraulic Data center,  
10 NHD, shows -- also support Whole Body Contact  
11 Recreation Category B, secondary contact recreation,  
12 warm water aquatic community, human health protection  
13 and life cycle wildlife water protection uses. These  
14 uses are also consistent with the presumptive  
15 beneficial use designations by the Clean Water Act.

16 The 1 to 100,000 scale NHD data set is a commonly  
17 used data set by the Department, U.S. EPA and  
18 U.S.G.S. to track water bodies in the State and  
19 nationally and is a fair representation of perennial  
20 rivers and streams and intermittent streams with  
21 permanent pools. In earlier presentations to the  
22 Commission and to the water protection forum  
23 workgroup the Department made demonstration as did  
24 the Missouri Department of Conservation that aquatic  
25 life do exist on these 1 to 100k waters and we feel

1 confident that designating to this special extent to  
2 those 1 to 100k waters will satisfy the rebuttal  
3 presumption of fishable/swimmable for -- for those  
4 waters.

5       And we say this is specially represented by the  
6 1 to 100k scale because that data set will change as  
7 you get finer and finer resolution. We want to make  
8 sure that the start and end points don't change, but  
9 we still get that representation based on the line  
10 work and not necessarily how -- how they change  
11 through time. There's interests from stakeholders  
12 and EPA that the Department maintain a list of those  
13 waters that receive the designation pursuant to this  
14 new rule. So in rule we've written that the  
15 Department shall maintain a geospatial data set,  
16 which is essentially GIS layer that you can draw maps and  
17 display pictures of those waters as well as a list of  
18 those water bodies that receive use designations  
19 under 2C and 2D of the rule.

20       That's to our benefit as well as stakeholders  
21 and EPA benefit so we can track these waters through  
22 time and be able to link them to permits and other  
23 environmental concerns or features that -- that we  
24 may need.

25       Lastly, 2K in rule the Department feels that

1 prior to implementation of new effluent limits for  
2 these -- for dischargers to these new waters there  
3 needs to be Use Attainability Analysis protocol  
4 that's been developed and adopted by the Commission  
5 to afford either the Department or a permittee the  
6 opportunity to go out and conduct a Use Attainability  
7 Analysis to rebut the -- both either the protection  
8 of aquatic life or the whole body contact uses that  
9 were -- that would be applied by these portions in  
10 rule.

11 Like I said these changes are part of the 2012  
12 Water Quality Standards triennial review. It's the  
13 Department's intention to kind of jumpstart the water  
14 classification workgroup at some time this fall to  
15 begin discussions on such things as that Use  
16 Attainability Analysis for aquatic life protection as  
17 well as other suggestions and past forward for moving  
18 the rule closer towards fruition for that 2012  
19 effective date.

20 And with that I'll answer any questions that you  
21 might have today.

22 CHAIRMAN HARDECKE: Okay. We'll take some comments  
23 and we may need to come back to you.

24 MR. JOHN HOKE: I agree. Thanks.

25 CHAIRMAN HARDECKE: John Carter.

1 MR. JOHN CARTER: Mr. Chairman, members of the  
2 Commission, I'm John Carter. I'm here as a  
3 landowner. And the 1 to 100,000 scale comes up in my  
4 hayfields to the normally dry drainages going to my  
5 hay fields. That takes a good rain to have water  
6 going through those hayfields. And, I think, that  
7 they do not need to be waters of the state would be  
8 under the regulation.

9 I have talked to my State Senators, State  
10 Representative both whom have farms asked them to  
11 check their farms to see how much of their land is  
12 covered like this and they are concerned. So I ask  
13 the Commission to, please, rethink adopting this  
14 rule.

15 Thank you.

16 CHAIRMAN HARDECKE: Okay. Thank you. Ed Galbraith.

17 MR. ED GALBRAITH: Good afternoon, Commissioners.  
18 Thank you for this opportunity to address the  
19 Commission on this draft rulemaking. My name is Ed  
20 Galbraith. I'm with Barr Engineering and I represent  
21 a number of municipals and sewer districts who have  
22 an interest in this rule and understand that the  
23 stream classification system does need to be  
24 addressed, but we would like to see it move forward  
25 in a predictable order and responsible manner.

1           This rule would increase the number of waters  
2 that have the presumed uses by about five fold. So  
3 it does have a significant impact on -- on the State  
4 and how -- how we manage the Clean Water Act in this  
5 State. So we do need to think carefully about how we  
6 move forward with this.

7           I do want to make just three brief points.  
8 First of all, this approach is consistent with  
9 Missouri's existing regulation to the extent that we  
10 classify waters based on their ability to have either  
11 perennial flow or perennial pools. What this rule  
12 does is instead of requiring actual field -- actual  
13 stream surveys or field investigations it's using GIS  
14 technology, basically, as a predictor and a  
15 reasonably good predictor of where -- of where that -  
16 - those perennial waters are. So in that sense even  
17 though it is a massive increase in the number of  
18 classified waters it's consistent with our current  
19 regulatory understanding and definition of how we  
20 classify waters.

21           The second thing, second virtue, I guess, of  
22 this rule as opposed to the Department's previous  
23 proposal was to suggest that all waters of the state  
24 have the presumed uses. What's -- what is a good  
25 thing or one aspect of using the 100k data is that

1 you know exactly where those stream reaches begin and  
2 end down to -- down to -- you know, as close as we  
3 can get GIS technology or GPS technology to go. So  
4 there's no ambiguity. It's not based on where --  
5 where the water is channelized or where it crosses  
6 the property line or things like that that can  
7 change. Once it's in the rule and has a GIS data set  
8 assigned to its permit writers, permittees, cities  
9 that manage MS4 permits they -- they know exactly  
10 where those -- where those presumed uses begin and  
11 end.

12 The third point that I'd like to make is that  
13 this approach is, as far as we can tell, is  
14 consistent with and reasonably likely to fulfill the  
15 requirements of the federal Clean Water Act in  
16 Missouri and I say that based on the -- on the fact  
17 that this approach was recently adopted by Iowa and  
18 even more recently approved by EPA for use in that  
19 state so we have a reasonable assurance that -- that  
20 it will fulfill the federal Clean Water Act  
21 requirements of assigning the presumptive uses to --  
22 to the waters of the United States.

23 So in summary it's a cost effective way of  
24 implementing our own regulations; two, it's -- it  
25 provides transparency and predictability and, three,

1 a pretty good assurance of complying with the Clean  
2 Water Act.

3 That's all I had to say. I'll answer any  
4 questions if I can. Thank you.

5 CHAIRMAN HARDECKE: Thank you. Terry Satterlee.

6 MS. TERRY SATTERLEE: Hi, my name is Terry Satterlee  
7 and I'm a lawyer with Shook, Hardy & Bacon. I'm here  
8 as part of the group that Ed's with representing  
9 municipalities, also, I have representing some Ag  
10 interests. I'd like to make two points and Ed did  
11 the schedule. And I'm on twice so I'll just give you  
12 once.

13 The Clean Water Act is 38 years old. I've been  
14 practicing 36 years so that gives you a feel of how  
15 I've watched it grow. I've always felt that it was  
16 implemented in the east coast and the west, but it  
17 never really fit in the middle, middle states and, I  
18 think, we're seeing the results of that now with the  
19 impact Ag and the municipalities.

20 And what I'd like to address is two issues, one,  
21 is the 1 to 100k. I support that issue. My clients  
22 support that. Understanding everybody's not going to  
23 like it, but it is a proven methodology. Iowa did  
24 have to do quite a few UAAs to protect -- to move, as  
25 Mr. Carter indicated, some of the Ag related issues,

1 but the alternative that we're looking at now with  
2 the notification by the Missouri Environmental  
3 Coalition is all waters of the state and I will  
4 relate very quickly to you. And I went through an  
5 all waters of the state designation in Kansas in  
6 1994, which was litigated; which was -- went through  
7 the Legislature twice, went to the Kansas Supreme  
8 Court, was in federal court. They had to do -- spend  
9 so much money on doing UAAs to get dry ditches out of  
10 the classification. And especially in Missouri where  
11 -- not unlike Kansas it includes groundwater in the  
12 definitions of water of the state, which makes it  
13 even more interesting to consider that under the pending  
14 litigation and notification that all waters of the  
15 state would include ground water in Missouri.

16 So I do encourage the -- my clients do encourage  
17 the adopting of the 1 to 100 understanding that  
18 the Use Attainability Analysis may have to and will  
19 be used specifically. Now, I'd like to address that  
20 quickly. And, I guess, this probably goes to Jenny.  
21 In Section 2A I'm very concerned with the downstream  
22 Water Quality Standards the way that it's worded and  
23 the fact that designating uses includes considering -  
24 - the consideration of groundwater. I think it  
25 should say "if appropriate" and frankly, I think, it

1 should reference the rules as they read right now.

2 EPA has announced that in the summer of 2011  
3 it's going to start redoing all these rules including  
4 the Use Attainability Analysis, which could have a  
5 significant impact. And without specific references  
6 to what you're really talking about now and dealing  
7 with in the federal regulations, which I happen to  
8 believe the federal regulations apply the way the Missouri  
9 regs were written. And you're just duplicating that  
10 here as opposed to putting a new standard, which as  
11 you know Washington and the regions are trying to  
12 implement now with regard to what a UAA is. I just  
13 would hope that maybe you want to think about putting  
14 the references in and -- and thinking about really  
15 how the downstream waters if appropriate, for  
16 example, really apply in the use designation.

17 So those are the two points I wanted to make.

18 Thank you very much.

19 CHAIRMAN HARDECKE: Phil Walsack.

20 MR. PHIL WALSACK: Hi, my name is Phil Walsack from  
21 Missouri Public Utility Alliance and I'm wanted to  
22 talk about a couple of very specific things. First,  
23 the adoption of the 1 to 100,000 map scale is a  
24 compromised position. It is equally painful to many.  
25 That's a better thing than all waters of the state.

1           One of the notions to remember is we're going to  
2 increase the number of waters in Missouri by five-  
3 fold. And where are those waters? Those waters are  
4 higher up in the -- in the food chain of waters.  
5 Okay? They are smaller streams. They are less  
6 populated areas. And one of the things that does is  
7 it affects smaller communities in Missouri. As you  
8 can see from the little spreadsheet that I've given  
9 you is one of the things we depend on is ratepayers.  
10 And ratepayers in cities pay for UAAs. They pay for  
11 regulations. That's just how the game works. And  
12 when we see communities that are losing population  
13 that means they have less ratepayers. As we move up  
14 into watersheds we see smaller communities up higher  
15 in the watershed.

16           And you can see when you look at the 3,500 all  
17 the way down to 100 people in Missouri you see that  
18 some of those populations have been leaving those  
19 cities; those municipal governments have been losing  
20 population since 2000. This will be hard on smaller  
21 Missouri cities. So we support the idea of a UAA,  
22 support the concept that we're going to be able to  
23 look at those smaller water bodies for smaller communities  
24 and see do we really have a water quality issue here.  
25 These smaller communities in Missouri, about 600 of

1 them, are going to be impacted by these new rule  
2 changes.

3       Going to -- now, in all honestly going to all  
4 waters of the State has little impact on the 1 to  
5 100,000 scale because most of those small  
6 communities will be in this and we do realize this  
7 already. But those 600 communities we need to have  
8 an off ramp, a regulatory off ramp, through the UAA  
9 process that we can say to the Jaspers of the world,  
10 to the other smaller communities out there that we  
11 have a place for you to get off the track of being  
12 heavily regulated when you have a small lagoon  
13 system.

14       So we support the 1 to 100,000 map scale data  
15 set. But it is still going to be a challenge. It's  
16 going to be a challenge for the Department to  
17 regulate five times more streams. And we understand  
18 that. And the folks you're going to have to regulate  
19 are the folks with less talent, with less people and  
20 with less money.

21       As I showed you last time what we're also seeing  
22 in Missouri is that our ratepayers as individuals are  
23 pretty smart. You know we decide to use less water  
24 because it cost money when we have tightening  
25 finances. That spreadsheet I gave you last meeting

1 we show that 50 of 70 so 50 communities are selling  
2 less water between 2008 and 2009 and that impacts  
3 what you can collect in rates, and what you can  
4 collect in fees, so --

5 We see those downturns in usage. We see  
6 downturns in population growth. New regulations will  
7 be hard on Missouri municipals particularly those  
8 high on the watershed on smaller water bodies.

9 Thank you very much.

10 CHAIRMAN HARDECKE: I got a question.

11 MR. PHIL WALSACK: Absolutely.

12 CHAIRMAN HARDECKE: is there a consideration of a  
13 categorical UAA for some of these smaller  
14 communities?

15 MR. PHIL WALSACK: I would say you're above my pay  
16 rate. I would say you'd need to talk to someone like  
17 an Ed Galbraith to understand what that really means  
18 on the larger scale. I don't really know if that's -- if we  
19 can pull that off.

20 But we need something to consider for those  
21 smaller cities. I don't know if the categorical one  
22 is going to work or not because some of the  
23 communities -- and the reason I say that is because  
24 the folks up in the north and the folks in the south  
25 they have different kinds of streams.

1 CHAIRMAN HARDECKE: Right.

2 MR. PHIL WALSAK: And we have losing streams in the  
3 south where you don't really have that in the north.  
4 We have lots of different things to consider between  
5 northern Missouri and southern Missouri and we just  
6 don't look alike in those two regions.

7 CHAIRMAN HARDECKE: Well, it could have more than one  
8 category, too.

9 MR. PHIL WALSAK: Absolutely.

10 Thank you.

11 CHAIRMAN HARDECKE: Kevin Perry.

12 MR. KEVIN PERRY: Good afternoon, Mr. Chairman. Good  
13 afternoon, Commissioners. My name is Kevin Perry and  
14 I'm with REGFORM the Regulatory Environmental Group  
15 for Missouri. We are a business association. I  
16 represent businesses from around the State on  
17 environmental issues. And I appreciate the  
18 opportunity to speak to you today on this important  
19 proposed draft regulation, so thank you very much.

20 As others before me have said, today, stream  
21 classification needs to be addressed in Missouri. We  
22 know that and stakeholders and others have come to  
23 the Department with the urge and the request to  
24 address this issue and we want to acknowledge that  
25 the Department has been responsive in taking on and

1 looking at and investigating this issue and working with  
2 stakeholders to come to a proposal that -- that will  
3 work for everybody and that will obviously satisfy  
4 some of the drivers that are there; a lot of those  
5 driven by EPA. And as also has been said while this  
6 proposal has some disadvantages to it that being  
7 five-fold increase in the regulatory burden we  
8 believe this is a workable compromise that given some  
9 of the other options that are available to us, like,  
10 the waters of the state. This is an attractive  
11 resolution and way to go particularly with the end  
12 points of the water bodies well defined in this 1 to  
13 100,000 database.

14 So we support it. And have a few comments to  
15 add to it. One, of which being just putting on the  
16 record our concern about the regulatory burden, the  
17 level of effort that is going to now rest on the  
18 shoulders of the Department to now regulate five  
19 times more. Obviously, I'm in here talking to the  
20 Commission. I'm in here talking to the staff and the  
21 administrators of DNR about how my members can be  
22 served better by the Department.

23 We are fee paying entities. We'd like to have  
24 the services provided and the permits reviewed. And  
25 this addition of this effort is a -- is a concern to

1 -- of ours, but we acknowledge once again it's a  
2 compromise that is -- is we think the right place to  
3 land.

4 Specifically, I want to remark on two parts of  
5 the draft regulation that's in front of you today and  
6 just, you know, make some requests or offer some  
7 ideas for further explanation that we'd like this  
8 group and staff to consider as we move forward with  
9 this regulation.

10 One, is in Section 2E of this. It describes the  
11 list of water bodies that must be maintained by the  
12 Department and it's not clear on this and we would  
13 like to see this be clear and that is that the list  
14 in its initial form be adopted by this Commission.  
15 And that subsequent amendments to this list also be  
16 reviewed and adopted by this Commission. We think  
17 that that's a significant part of this and that it  
18 should not just be administratively adopted by the  
19 reference to the earlier sections in this proposed  
20 rule.

21 Secondly, I would invite you to consider with me  
22 Section 2G. This part of the proposed rule, the  
23 draft rule as we see it today identifies a UAA  
24 process for removing uses and sub-categories of uses,  
25 but it -- it doesn't really spell out an objective

1 process that could be used by anyone to add a use.  
2 So we would like, again, this Commission and members  
3 of the Staff and administration at the Department to  
4 consider that the fair process would be to set for  
5 the process a set of rules, a set of guidelines that  
6 everybody can play by to get things added on and  
7 removed.

8 So that there's no surprise. There's no  
9 unanticipated additions that are outside of the  
10 expected procedure, so --

11 Those are our comments for today. Again, we  
12 appreciate you guys turning an ear our way and  
13 listening attentively to our suggestions and, again,  
14 we support this 100,000 adoption. We're  
15 concerned about the level of effort, but we see it as  
16 being responsive in something that really needs to be  
17 addressed, so --

18 Thank you for your attentiveness. And if I can  
19 answer any questions I'll give it a try.

20 (No response.)

21 CHAIRMAN HARDECKE: In 2G would that be a place that  
22 you would define a categorically UAA or something to  
23 that type?

24 MR. KEVIN PERRY: You know, I don't think we would  
25 oppose it. I think that if it's possible and I think

1 that -- you know, Phil, just said that we need to  
2 really explore those categories and what they really  
3 mean and so if that turns out to be a fine place to  
4 put it, I think, that'd -- that'd be fine. But, I  
5 think, what we're really asking for is that the  
6 process be well defined. That we don't just wake up  
7 one day and find something that's been added that  
8 nobody's looked at or considered previously.

9 CHAIRMAN HARDECKE: Thank you.

10 MR. KEVIN PERRY: You're welcome.

11 CHAIRMAN HARDECKE: Robert Brundage.

12 MR. ROBERT BRUNDAGE: Mr. Chairman, members of the  
13 Commission, I'm here on behalf of a number of my clients  
14 who have concern about this rule. However, as the  
15 speakers before you I'm kind of this group with Ed  
16 Galbraith, Terry Satterlee, Phil Walsack, REGFORM and  
17 Trent Stober's going to hear from it. We -- my  
18 clients and -- or many of my clients are generally  
19 supportive of the 1 to 100k. One aspect of the rule  
20 that I wanted to point out as part of my presentation  
21 so as not to overlap the other speakers here is kind  
22 of the last part of the rule.

23 It talks about Use Attainability Analysis for  
24 aquatic life protection. It says that these UAAs  
25 shall be performed in accordance with methods and

1 procedures found in the, quote, Missouri Aquatic Life  
2 Protection Use Attainability Analysis Water Body  
3 Survey and Assessment Protocol, to be developed by  
4 the Department and adopted by the Commission. And it  
5 goes on to say, implementation of the new effluent  
6 limitations for dischargers affected by 2C and 2D of  
7 this rule shall not occur until such time as this  
8 document is adopted and available for use.

9 In other words, it's not going to kick in until  
10 we have the use attainability process in place and  
11 that's a positive aspect of this rule. But one other  
12 thing that's not addressed in this rule is; what are  
13 we going to do in the meantime? If this rule is in  
14 effect and we haven't had time to get the UAA in  
15 place to be able to perform these UAAs what are we  
16 going to do about the 303(d) listings?

17 So we would suggest that there -- that the  
18 Department consider that, take that into account and  
19 somehow during the -- I don't know where you would  
20 put this. Whether you put it in this rule or in the  
21 listing methodology or by policy of the Commission  
22 that if the regulation was changed and we applied  
23 some different Water Quality Standards then until  
24 such time this UAA protocol is in place and people  
25 have had time to utilize it you're not going to add a

1 whole lot more water bodies to the 303(d) List when  
2 they're probably just going to be taken off through  
3 UAA process.

4 So that was my comment. Thank you.

5 CHAIRMAN HARDECKE: Mary West.

6 MS. MARY WEST: Thank you, Chairman Hardecke. My  
7 name is Mary West, Commissioners. I'd like to make,  
8 I guess, about four points today and I'll try and  
9 keep it brief. I've been serving on the stakeholder  
10 committee for stream classification since it began  
11 several years ago. I will tell you that it has not  
12 been a painless process. That there have been a  
13 number of varying opinions in that group and that we  
14 failed to come to consensus as a stakeholder group.  
15 That is one of the few stakeholder groups that I have  
16 ever been in that resulted, as you will, in a split  
17 decision.

18 One of the things that we disagreed about and  
19 then I repeatedly asked for clarification regarding  
20 was the difference between waters of the United  
21 States and waters of the state. As you know the  
22 waters of the state includes a subset of waters of the  
23 United States, but goes beyond what we would  
24 typically think of as waters of the U.S.,  
25 particularly, in light of the SWANCC and Rapanos

1 decisions. The September 2000 letter may have been  
2 written entirely differently had it may -- had it  
3 been written today regarding the unclassified waters  
4 in the state.

5 The second point that I would like to make is  
6 that because of the vast and far reaching impacts of  
7 this change to classified waters in the State of  
8 Missouri about by far and above the majority of  
9 permitted entities discharge into unclassified,  
10 currently unclassified waters of the state.  
11 Permittees are going to require flexibility and  
12 implementation whether it be variances, site specific  
13 criteria, Use Attainability Analyses or what have you  
14 the flexibility in how this rule is implemented is  
15 going to be key in how much this cost and whether or  
16 not it is actually successful in improving the water  
17 quality in the streams.

18 As others have mentioned before, this will  
19 classify about five times the number of stream miles  
20 that are currently classified for the beneficial uses  
21 for fishing and swimming. The TMDL requirements,  
22 that I would expect to see, would be more than five  
23 times what we are currently looking at. In addition  
24 to, increased water quality monitoring requirements  
25 that we currently don't have resources for on the

1 existing streams and engineering reports, plans and  
2 specifications review for plant upgrades, et cetera.  
3 This is going to impact not only the permitted  
4 entities but also DNR Staff and EPA Staff as well  
5 because there's going to be a huge amount of  
6 workload.

7       The environmental impact is another issue that  
8 we need to consider. Repeatedly in meetings with  
9 regulators when asked if we can determine what  
10 actions were necessary to improve water quality the  
11 answer is, no, this is just the rule. This is the  
12 way we have to do this. I would encourage the  
13 Commission to push to let us do the things that make  
14 sense in the watershed that will actually improve the  
15 water quality. If that is building an upgraded  
16 treatment plant then it is building an upgraded treatment  
17 plant. If it is addressing nonpoint sources from Ag  
18 then it is addressing those nonpoint sources. If its  
19 storm water runoff from a community then that's what  
20 it is. But let's sit down as a group; identify the  
21 priorities and where we need to spend our money.

22       The increased power and chemical use for  
23 increased requirements on permitted entities when  
24 they may not be the source of the impairment whether  
25 its natural conditions for low DO, habitat loss or

1 nonpoint sources does not seem to be a good  
2 requirement and would money ill spent.

3       Protection for water -- for waters that are  
4 unclassified currently does exist. We have narrative  
5 criteria in the State as a blanket designation.  
6 There are those who would tell you that there are no  
7 requirements for those who discharge into these  
8 unclassified waters and I would like to remind you  
9 that there are technology limits as well as water  
10 body by water body designation. And so everyone has  
11 to meet a certain amount of effluent limits in their  
12 permits when they discharge whether it's a general  
13 permit for construction activities, for storm water  
14 or whether it's a wastewater treatment plant or a  
15 CAFO. All of us have regulations we have to meet  
16 whether it's to an unclassified stream or classified  
17 stream.

18       The difference is really about disinfection.  
19 That -- that is probably the biggest issue. The  
20 second issue is, protection of the lower orders of  
21 aquatic organisms and you will notice in your permit  
22 -- or in the rule Trent will actually talk to you  
23 about that in a minute, about aquatic organisms and I  
24 looked for that definition in federal law and cannot  
25 find it.

1           So in summary and not to keep you too much  
2 longer, but in general a designation for the 1 to  
3 100,000 is a compromised position. Many of us  
4 are not like -- do like it, but we feel that given  
5 other alternatives it's probably the best that we can  
6 do in today's regulatory climate. In a perfect world  
7 each stream would be assessed one-by-one or at least  
8 each watershed modeled and uses assigned that are  
9 achievable and reasonable. However, that is not the  
10 case because we don't have the time or the resources.

11           I will tell you a brief story just to illustrate  
12 why I get so passionate about this. And I went to  
13 visit a small treatment plant in a mid-size  
14 community. This community has three treatment plants  
15 in their community. A lot of communities in Missouri  
16 are like this they don't just have one plant they  
17 have several. I've seen as many as four or five  
18 municipal plants from one community.

19           But as we're driving down the gravel road  
20 outside of town to get to this treatment plant we  
21 notice off to the side cows standing in the creek.  
22 We get to the treatment plant, part of the scope of  
23 study that we're being asked to evaluate is  
24 disinfection for the wastewater treatment plant, I  
25 would submit to you that until the cows leave the

1 creek it doesn't make much sense to spend a million  
2 dollars on disinfection at that treatment plant.

3 So, I think, we just need to look at all of the  
4 issues, all of the sources, figure out where our  
5 money is best spent and then move on from there  
6 whether we deem these waters as classified or not we  
7 need to look at water quality impacts and how we can  
8 best improve the resource.

9 Thank you and I'll answer any questions.

10 (No response.)

11 CHAIRMAN HARDECKE: John Lodderhose.

12 MR. PHIL WALSACK: Hi, I'm Phil Walsack. I'm not  
13 John Lodderhose.

14 COMMISSIONER TUPPER: Hi, John.

15 (Laughter.)

16 MR. PHIL WALSACK: Got better looking already.

17 Don't repeat that. It doesn't take them long.

18 A few things I wanted to bring back to your  
19 attention. Now, you heard me enough this morning  
20 talk about dissolved oxygen. This is a place where  
21 we start talking about dissolved oxygen in these new  
22 regulations.

23 The dissolved oxygen standard needs to be  
24 addressed in what we're doing here. Just piling on  
25 some more dissolved oxygen strings, some more 303(d)

1 listed streams is not a good idea in light of the  
2 fact that we're going to increase the number of  
3 streams being regulated by the Department.

4 We need a comprehensive look at and I hate using  
5 the word comprehensive right now 'cause it has  
6 negative connotations, but we need this dissolved  
7 oxygen deal dealt with. Dissolved oxygen is not a  
8 pollutant. It's a condition. We cannot have five-  
9 fold more streams being impaired for dissolved  
10 oxygen. We really need to get this right and just  
11 have this done fast.

12 Thank you.

13 CHAIRMAN HARDECKE: Trent Stober. We actually get  
14 Trent here.

15 MR. TRENT STOBER: Hey, how 'bout that. We'll try to  
16 keep this brief, but I'll just highlight the  
17 opportunity that we have here to go ahead and refine  
18 our Water Quality Standards, in particular, our  
19 beneficial uses and water quality criteria for  
20 (Tape Two, Side B concluded.)

21 MR. TRENT STOBER: -- aquatic life uses while I  
22 confer with the Department that we need multiple  
23 classifications or different tiers of aquatic life  
24 uses. We feel that there could be some further  
25 refinement to -- to help us assign uses properly

1 within water bodies. For example, the limited warm  
2 water aquatic life community where it specifies that  
3 anthropogenic or human cause conditions are factors  
4 that could allow the water body to move into those --  
5 into that category. However, there's many times  
6 natural conditions that -- that impact the -- the  
7 aquatic life that we can expect to have in a given  
8 stream.

9       And that's reflected in the UAA factors that --  
10 that are embodied in the federal regulations. Many  
11 of those hinge on more natural conditions. Only --  
12 only a couple -- or, I think, three factors really  
13 hinge on human cause conditions.

14       As I said, too, getting the uses right is one  
15 thing, but also this is an opportunity for us to  
16 assign an appropriate level of protection with  
17 respect to the criteria that apply to those uses. In  
18 particular, Phil just brought up we really need to  
19 use this opportunity to address our dissolved oxygen  
20 criteria. In addition, I would go on to say our  
21 biologic data and biocriteria need to be carefully  
22 thought out in how those data are applied to various  
23 streams. For example, right now our reference  
24 streams and our biocriteria are really targeted for  
25 wadable, perennial streams and comparison to those

1 streams for these smaller are just as inappropriate  
2 as comparison of a bio criteria to our large rivers  
3 like the Missouri and Mississippi River.

4       So we really need to vet through a process to,  
5 again, classify these -- or assign these beneficial  
6 uses, but also the criteria and how those apply.  
7 We're in wholehearted agreement that aquatic life Use  
8 Attainability Analysis protocol is -- is needed and  
9 is something that can be implemented. Several states  
10 have gone through these processes and I don't see  
11 anything that should hold back our state.

12       I mean obviously those need to be refined to  
13 tailor them to our water bodies and our aquatic life  
14 communities. We look forward to working with the  
15 Department and the stakeholders to develop such a  
16 protocol.

17       My only other comment would be in Section 2A,  
18 Paragraph 2A, on -- on how downstream uses are  
19 considered within designating uses. And concerned  
20 about how there might be reinterpretations of the  
21 original intent of the federal regulations with this  
22 regard. And ultimately all streams are going to have  
23 a higher beneficial use for the most part downstream of them until  
24 we get to the ends of the waters of our state. So how  
25 that -- how that Use Attainability Analysis comes

1 into play with those downstream uses is to some  
2 degree, you know, fairly vague.

3 And we have adequate mechanisms within our water  
4 quality regulations to address those such as when we  
5 develop water quality based effluent limits. Those  
6 effluent limits not only have to protect the  
7 immediate use within the water body, but also any of  
8 those downstream uses. Similarly a Total Maximum  
9 Daily Load study has to protect all those uses  
10 whether it flows -- you know, once a water body  
11 leaves our state as well.

12 So we sure would recommend in removing that --  
13 that paragraph from the regulation as well. So with  
14 that any comments/questions?

15 CHAIRMAN HARDECKE: You're saying remove 2A in its  
16 entirety?

17 MR. TRENT STOBBER: Yeah. I believe that that --  
18 there's already federal regulations that could be  
19 embedded in that and I -- I'm just concerned that  
20 that could be misinterpreted within our regulatory  
21 framework.

22 Thank you.

23 CHAIRMAN HARDECKE: Leslie Holloway.

24 MS. LESLIE HOLLOWAY: Mr. Chairman, members of the  
25 Commission, Leslie Holloway representing Missouri

1 Farm Bureau. I want to talk about one aspect of the  
2 proposal in front of you in particular. I agree with  
3 comments that have already been made. But when we  
4 talk about whether to go to the 1 to 100k NHD we have  
5 some real concerns with that along the lines of what you have  
6 heard previously from John Carter and Phil Walsack.

7 We were brought into this process late in the  
8 process, in fact, it was in February of 2009 before we  
9 received our first notice of the workgroup  
10 proceedings. So we came in after there had been a  
11 discussion of this and, in fact, the presentation at  
12 the January 2009 meeting. And it might be useful to  
13 review from the notes of that workgroup meeting there  
14 was a summary of advantages and disadvantages to  
15 going to the rule of the 100k scale.

16 And one of the disadvantages was that it likely  
17 -- the 100k NHD network likely extends beyond the  
18 stream reaches capable of supporting other Section  
19 101A uses, i.e., swimming and human health fish  
20 consumption.

21 Another disadvantage was the large increase in  
22 classified streams, five times the current mileage,  
23 might increase the cost significantly for administering  
24 permits and water quality assessments. The minutes  
25 go on to say that the group discussed these

1 advantages and disadvantages in context of three  
2 critical needs; Number one, to satisfy the  
3 fishable/swimmable goal of the Clean Water Act. I'm  
4 abbreviating these. Two, to ensure that the  
5 classification system is manageable by the State; is  
6 accessible and legible to the general public and is  
7 compatible with systems used by other agencies  
8 involved with water quality management. And, three,  
9 is to establish a proper foundation for the  
10 development and administration of other essential  
11 elements of the Water Quality Standards including the  
12 biological assessment procedures, reference streams,  
13 tiered aquatic life uses, biological condition  
14 gradient and UAAs.

15       And, again, that was a meeting that we were not  
16 a part of because we hadn't been included in the  
17 notification of these meetings until after that took  
18 place, but given that and given the discussions that  
19 have come subsequent to that we have some concerns.  
20 And certainly the issue of categorical UAAs is one  
21 that comes into play in discussing whether that's an  
22 appropriate scale to move forward with. And we do  
23 think the categorical UAAs need to be revisited or  
24 something along those lines that might make it a more  
25 workable approach for the state.

1           And other than that the other thing I'd like to  
2 comment on is the process that we're going through  
3 now involving the legal proceeding that the Missouri  
4 Coalition for the Environment has initiated at the  
5 same time that the Department is trying to move forward  
6 with this rulemaking process.

7           And the thing that, I think, needs to be really  
8 emphasized for the record and for whatever role the  
9 Commission may end up playing in that legal  
10 proceeding is that it appears to me that there is  
11 more than adequate evidence that DNR has been moving  
12 forward with this rulemaking. They may not have  
13 moved as fast as the Coalition would have liked them  
14 to and maybe have not moved in the exact direction  
15 that the Coalition would like for them to move. But if  
16 there's any question and my understanding of the  
17 basis of the legal action is to try to show that DNR  
18 and EPA have not in fact moved forward with trying to  
19 address a situation that EPA had brought to DNR's  
20 attention in that letter from 2000.

21           When, in fact, you know, in the letter from 2000 it  
22 was presented to DNR as something that needs to be  
23 discussed. That's a quote from the letter. It  
24 wasn't something you've got to do this tomorrow. It  
25 wasn't at the top of the list. There was a list and

1 I talked about this at the March Commission meeting.  
2 I won't go through it again, but there was a list of  
3 at least a dozen things probably more that DNR was to  
4 address. And they had those prioritized. DNR  
5 responded and said, this is how we would prioritize  
6 these. On the issue of the unclassified streams they  
7 said, we need to discuss this further with  
8 with DNR because we need further  
9 clarification.

10 After that there was a letter sent out to  
11 stakeholders about setting up meetings to start  
12 working with stakeholders on all of these issues. It  
13 was a series of one, two, three, four, five, six  
14 meetings schedule in 2001 to address the whole range  
15 of issues that had been addressed -- that had been laid  
16 out by EPA.

17 So between that initial notification in 2000 and  
18 the actions that DNR took then and the subsequent  
19 discussions that DNR has had with stakeholders and  
20 with the workgroup there are -- there are plenty of  
21 examples of how both EPA and DNR have been moving forward  
22 on this process. And if there is further discussion  
23 of that I would urge the Commission to weigh in, in  
24 that regard, and also urge the Department to weigh in  
25 on that regard.

1           And, finally, the comment that I bring up pretty  
2 regularly because it seems that, again, as Mary West  
3 pointed out. What is the environmental impact of  
4 what -- what we're proposing here? What are we going  
5 to accomplish? If you look at water quality overall  
6 in Missouri it's better now than it's been. And if  
7 we're moving in the right direction then, you know, we  
8 need to take that into account as well.

9           And I'd be happy to answer any questions.

10 CHAIRMAN HARDECKE: Thank you.

11 MS. LESLIE HOLLOWAY: Thank you.

12 CHAIRMAN HARDECKE: I got a couple questions maybe of  
13 John before we go to the last card.

14           In regard to how far up these small streams this  
15 would go have you made a map that would show --

16 MR. JOHN HOKE: Yeah. We've made maps on the -- kind  
17 of the extent of how far these -- these waters go.  
18 It really depends on the watershed because it's in  
19 the watershed area and how much it collects to form  
20 those 1 to 100k streams.

21           We have that available. We can present it to  
22 you. I know the difference between the 1 to 100k,  
23 which is -- if you're familiar with topographic maps  
24 it's like the 30 meter resolution. It's the big map.  
25 The blue lines on the big map whereas seven and half

1 minute quad you're used to when you go hiking you're use to and  
2 things those are the 1 to 24k. Some of the 1 to 100k are  
3 the solid blue lines on there, some of them not.  
4 Predominately those are 1 to 24k waters on that type  
5 of scale.

6 It is about a five time increase in the number  
7 of classified to be sure.

8 CHAIRMAN HARDECKE: Well, I would like to have a map.  
9 And, now, in regard to what John Carter said and  
10 Leslie, you know, I think people need to know how far  
11 up these dry ditches we're talking about going. And  
12 then --

13 COMMISSIONER TUPPER: You want me to ask my question  
14 to John while he's up there?

15 CHAIRMAN HARDECKE: That's fine.

16 COMMISSIONER TUPPER: Mostly it's about the UAAs -- I  
17 mean, Mary might have been talking about Jasper.  
18 And, I guess, we won but we did not improve water  
19 quality one iota.

20 MR. JOHN HOKE: Um-huh.

21 COMMISSIONER TUPPER: All we did was cost the  
22 citizens of Jasper an extra ten or \$15 a month on  
23 their sewer bill. And Mr. Duggan is not correct.  
24 The difference between C and D operator is not 1.3  
25 points; it's several hundred dollars a year.

1 MR. JOHN HOKE: Um-huh.

2 COMMISSIONER TUPPER: I mean that's the difference.

3 MR. JOHN HOKE: Right.

4 COMMISSIONER TUPPER: What they had was three D  
5 operators including the mayor and a couple alderman  
6 and they ran the sewer plant. Now, they've got to go  
7 get somebody trained and pay for it.

8 UAA's, I attended a meeting many, many months ago  
9 and we talked about asking people if they had ever  
10 seen anybody swim in these streams.

11 MR. JOHN HOKE: Um-huh.

12 COMMISSIONER TUPPER: What happened to that?

13 MR. JOHN HOKE: The -- getting back to Possum Creek  
14 in Jasper County as an example. That was one of the  
15 waters that received whole body contact back in 2005  
16 with a default sort of application by the Commission  
17 at that point in time.

18 The Department initiated UAAs at the request of  
19 the Commission to go out and try to rebut that  
20 presumption. We gathered the data. The question  
21 here was as Mr. Duggan said, was it at base flow?  
22 Looking at the data the contractor and the Department  
23 thought it was at base flow. We -- as part of that  
24 process we try to get interviews. The contractor did  
25 not get any interviews. We did not receive any

1 comments from the public when we put the UAAs on  
2 public notice. So we didn't receive any information  
3 on existing uses.

4 COMMISSIONER TUPPER: Has anybody from DNR ever seen  
5 Possum Creek?

6 MR. JOHN HOKE: I believe Mr. Perkins has.

7 COMMISSIONER TUPPER: Who would that be?

8 MR. JOHN HOKE: Mr. Perkins is Southwest Regional  
9 Office. Yeah, he's been out to Possum Creek and he  
10 was the --

11 COMMISSIONER TUPPER: Oh, that's Greg.

12 MR. JOHN HOKE: Yeah, talk to Greg.

13 We -- we acknowledge that precipitation might  
14 have been an issue in that case and we volunteered to  
15 work with the City to come up with another UAA in the  
16 future at some point in time in the future if they  
17 were willing to do it. We haven't heard from the  
18 City, yet, on -- on that.

19 COMMISSIONER TUPPER: I've walked all six miles of  
20 that thing and you couldn't put me in there if you  
21 had a gun to my head.

22 (Laughter.)

23 COMMISSIONER TUPPER: I mean it's that bad.

24 MR. JOHN HOKE: Yeah.

25 COMMISSIONER TUPPER: In your testimony you talked

1 about getting rainfall data from the same watershed;  
2 are you aware that Pierce City and Diamond are not in  
3 that watershed?

4 MR. JOHN HOKE: When Staff looked at it, yeah, they  
5 try to find rainfall data that was within the  
6 watershed or adjacent to within reasonable proximity.

7 COMMISSIONER TUPPER: Would it not be more prudent to  
8 get some data from maybe four points around? All of  
9 these are south and east and --

10 MR. JOHN HOKE: Um-huh.

11 COMMISSIONER TUPPER: -- way south and east.

12 MR. JOHN HOKE: Obviously, we like to get, you know,  
13 as close to the watershed as possible.

14 COMMISSIONER TUPPER: Why do they accept it when they  
15 just go on the Internet and get some numbers? Why  
16 don't we force the contractors to really do a job?

17 MR. JOHN HOKE: To setup a gauging station or to  
18 collect the data?

19 It's something we thought about. We actually  
20 would like to engage the operators more in the  
21 process as well if they have -- have data that they  
22 could have submitted. And we mentioned this to the  
23 operator of the City of Jasper the Department could  
24 have accepted their data on precipitation had they  
25 commented on the UAA and let us know that perhaps

1 there -- it may have been an outlier. Even if the  
2 Department had refuted the UAA and basically said it  
3 was inconclusive and we couldn't use any of the data  
4 fundamentally the water body had the use from the  
5 2005 rulemaking and until it gets removed by UAA  
6 those points had to be assessed against the operator.

7 I mean, I --

8 COMMISSIONER TUPPER: That's a whole other issue.

9 MR. JOHN HOKE: Yeah.

10 COMMISSIONER TUPPER: The reason I'm picking on you,  
11 John, is you told the administrative judge you're the  
12 guy that trains the contractor, so --

13 MR. JOHN HOKE: Um-huh.

14 COMMISSIONER TUPPER: I mean, it looks to me like  
15 we're paying for nothing.

16 MR. JOHN HOKE: There are some -- there are other  
17 examples where the UAAs that the contractors have  
18 done have offered some relief to a facility and the  
19 use has been removed. It just -- you know, the  
20 weather conditions, the field conditions at the time  
21 and Possum Creek is something we can take another  
22 look at in the future. Work with the City maybe on  
23 coming up with a UAA if that's something they're  
24 interested in.

25 COMMISSIONER TUPPER: Okay.

1 CHAIRMAN HARDECKE: Okay. One more for now and then  
2 I'll save the rest for -- are -- does the Department  
3 intend to deal with the DO issue in this rulemaking?  
4 MR. JOHN HOKE: Yeah. In the rulemaking report that  
5 accompanied a previous version of the rule under --  
6 there's a section on addressing Section 304(a)  
7 criteria, which is criteria that EPA develops for  
8 states to promulgate in Water Quality Standards. DO  
9 is one of those issues. The Department recognizes  
10 that the 5.0 milligram per liter minimum is only one  
11 of a half dozen DO criteria of different  
12 concentrations and different durations and  
13 frequencies that are available to the State to use  
14 from the EPA.

15 EPA has a 1986 dissolved oxygen criteria  
16 document that actually contains a table of DO values  
17 not only minimums, but daily averages, weekly average  
18 values that the Department for whatever reason did  
19 not put in our Water Quality Standards back in --  
20 back in the early days that predates my time. So  
21 there are other criteria available that if used and  
22 assessment methodologies, the 303(d) listing  
23 methodology, if it used some of those criteria and we  
24 deemphasized those daily minimums and more emphasize  
25 kind of a natural even flow water quality and

1 DO in the streams of Missouri.

2       Some of those listings, I don't know how many,  
3 will probably drop off because you're not holding  
4 them to higher criteria. And one of the things we'd  
5 like to do with this next rulemaking is look at  
6 incorporating more of those dissolved oxygen criteria  
7 in our standards as well as, you know, even that may  
8 not fit all the cases in the State. We'd also like  
9 to look at, in some cases, more site specific DO  
10 criteria kind of on a stream segment by stream  
11 segment basis.

12 CHAIRMAN HARDECKE: Are we going to do that now?

13 MR. JOHN HOKE: It's part of this 2012 Water Quality  
14 Standards rulemaking, yeah, broadening the DO  
15 criteria so no longer will there just be two values.  
16 A minimum for warm water and a minimum for cold  
17 water, but we'd like to put in some daily average  
18 values that are -- that are much lower -- and  
19 resemble, based on EPA's own studies conditions that  
20 aquatic life can tolerate and survive in. And we're  
21 talking four milligrams per liter, in some cases  
22 three. So there are much lower criteria that we  
23 could have at our disposal if they were in the  
24 Standards and that's our intention to put them in the  
25 Standards.

1 CHAIRMAN HARDECKE: Well, we've been talking about  
2 this for a long time so, I think, the folks -- the  
3 stakeholders out here are -- want that included.

4 MR. JOHN HOKE: For sure.

5 CHAIRMAN HARDECKE: What about the cost of all of  
6 this to DNR? We had lengthy discussion about data  
7 this morning. If you increase the stream miles by  
8 five times where are we going to find the money to do  
9 the testing, do the TMDL, the data collection, the  
10 data recovery, the TMDLs and UAAs?

11 MR. JOHN HOKE: Yeah. It is a much larger volume of  
12 work. Other states have encountered -- I mean, other  
13 states have much larger scopes of waters that they  
14 have to investigate as well. John Ford's the  
15 monitoring guy, but he and I have had some  
16 discussions on that and with that increase in water  
17 bodies without an increase in funding we work those  
18 in to our schedule.

19 You know we say we'll take X percentage of that  
20 every year over the next ten to 15 years and assess  
21 them. It's not something that EPA was going to,  
22 hopefully, require us to assess immediately but  
23 rather allow us to work them into our workload and,  
24 you know, pick some percentage every year for the  
25 next five years, ten years. So that eventually we'll

1 have a cycle where we actually do go in and we assess  
2 all these waters and do TMDLs and conduct inspections  
3 and that sort of thing.

4 Obviously, if we get an increase in funding we  
5 can speed that up a little bit.

6 CHAIRMAN HARDECKE: Okay. But if these 1 to 100k is  
7 adopted are the regulated entities going to have that  
8 much time to comply?

9 MR. JOHN HOKE: The -- the idea behind the UAA  
10 protocols that we have is that, you know, until  
11 they're available for use the Department would not  
12 compel, you know, a permittee to comply with those  
13 regulations.

14 I think something the Department has done and  
15 the Commission has recognized in the past that it's  
16 only fair that we allow time for studies and  
17 implementation when new rules come into affect. I  
18 think that was shown in the previous disinfection  
19 rule back in 2005. It was shown in the phosphorous  
20 reduction rules down in Table Rock Lake and that area  
21 of the state back when those rules were put in. And  
22 I see this as being no different.

23 In this version of the rule we don't have any  
24 dates specific in the rule. If stakeholders are  
25 willing to work with the Department to discuss dates we can also

1 put - we could potentially put those in as well to give  
2 some certainty when protocols will be developed and  
3 things will be implemented and that sort of thing.

4 CHAIRMAN HARDECKE: Okay. Well, we might get back to  
5 you.

6 MR. JOHN HOKE: Okay. Thank you.

7 CHAIRMAN HARDECKE: Thank you. John DeLashment. Another John.

8 MR. JOHN DeLASHMIT: Third or fourth, I believe.  
9 Good morning or afternoon. I'm John DeLashmit, chief  
10 of Water Quality Management Branch at EPA's Region 7  
11 office. I have a statement I'd like to read and then  
12 I'll give copy to Malinda afterwards so she'll have  
13 it.

14 Today, September 8th, 2010, is the ten-year  
15 anniversary of EPA's September 8th, 2000, letter to  
16 MoDNR that cited problems with the Water Quality  
17 Standards in the State of Missouri.

18 We've made quite a bit of progress in the last  
19 decade, but we still have some work to do.  
20 Unfortunately, Missouri has yet to apply default  
21 beneficial uses to all of its waters. As our 2000  
22 letter states Section 101A(2) of the Clean Water Act  
23 establishes a national goal of water quality which  
24 provides for the protection and propagation of fish,  
25 shellfish and wildlife and recreation in and on the

1 water wherever attainable.

2 EPA's regulation at 40 CFR Part 131 interprets  
3 and implements these provisions by requiring that  
4 Water Quality Standards provide for a default use  
5 designation of fishable/swimmable unless those uses  
6 have been shown through a Use Attainability Analysis  
7 to be unattainable. And this application is to  
8 waters of the United States.

9 The failure to make these designations has  
10 serious environmental problems. The region and MoDNR  
11 have been presented with data taken from many  
12 unclassified streams in Missouri that show waters  
13 teeming with aquatic life, aquatic life that deserves  
14 protection. Since more than 80 percent of the  
15 State's NPDES permits are issued for discharges that  
16 occur into unclassified waters the scope of the  
17 problem is significant.

18 Ten years have gone by. It's time to stop  
19 talking and take action. Missouri is one of the last  
20 states in the country to deal with this aspect of the  
21 Clean Water Act. This prolonged inaction has  
22 prompted others to act to remedy the situation.  
23 You're all probably aware that on August 8th, 2010, a  
24 lawsuit was filed in federal court alleging that EPA  
25 has failed to fulfill its duty to ensure that

1 Missouri's Water Quality Standards are in compliance  
2 with the Clean Water Act.

3 The lawsuit asked the court to order the EPA to  
4 specify the changes necessary for Missouri's Water  
5 Quality Standards to meet the requirements of the  
6 Clean Water Act and if the State fails to adopt the  
7 changes within 90 days to promulgate the Water  
8 Quality Standards for the State of Missouri.

9 It's longed been the preference of the Clean Water  
10 Act and EPA for the states to develop their own Water  
11 Quality Standards and we want that to be the case  
12 here. If the State fails to act on this matter very  
13 soon it may not be our decision to make.

14 Any questions?

15 (Laughter.)

16 MR. JOHN DeLASHMIT: Thank you.

17 CHAIRMAN HARDECKE: Any questions of anybody?

18 (No response.)

19 CHAIRMAN HARDECKE: I'll just make a statement, I  
20 think, in regard to cost. We've talked -- heard a  
21 lot of testimony today about the cost to permitted  
22 entities that -- I think, I raised this in some of  
23 the last meetings I haven't heard any estimate of  
24 cost or I don't know how you could estimate the cost  
25 of the nonpoint source entities and, I think, that's

1 something we need to address as we go forward because  
2 that -- that will be sizable I'm sure.

3 I guess it would be time to move on to **Tab No.**

**4 8.**

5 MS. COLLEEN MEREDITH: Good afternoon, Chairman  
6 Hardecke, Commissioners. I'm Colleen Meredith. I'm  
7 chief of the Watershed Protection Section. And I'm  
8 bringing to you Tab No. 8 and its Page 657 and 658  
9 and at the July 7th, 2010, Commission meeting Greg  
10 Anderson spoke to you about the targeted 2008/2009  
11 Section 319 Nonpoint Source Grant project ranking.  
12 And we brought this to the Commission as information  
13 only.

14 Due to discussion with the Commission and with  
15 some of the applicants and there are some of the  
16 applicants in the audience today it was made plain  
17 that the incremental funds if we could spend those  
18 this year it would be the most beneficial to get  
19 those out to the group.

20 The first listing we gave you had ten practices  
21 that were approved and those were for base funds  
22 except for three practices -- or three of the  
23 projects. Now, two of the projects were the State --  
24 the Lakes projects and those are funded  
25 noncompetitively because those are used for 303(d)

1 listing and for monitoring.

2         So in this new listing what I have is on the top  
3 the first nine projects are base funded projects,  
4 those are the ones that were already approved in the  
5 last list. The top project just under the base  
6 projects was the one project that was approved for  
7 incremental funds. So what staff did is we got  
8 together and we looked at all the projects that were  
9 not recommended for funding and in the last listing  
10 it said, not recommended for funding unless there was  
11 significant revisions. So what we did is we went  
12 through and we got -- we looked at all the projects  
13 that were not recommended for funding again and we  
14 looked to see if there were any of those that with  
15 some work we could get to meet incremental funding so  
16 that we could get that money out there.

17         So we looked at several different things and  
18 they were if the project had an accepted nine element  
19 watershed plan, which is required or if they were  
20 very close with a draft plan. We also looked if they  
21 had a monitoring plan because that's a requirement.  
22 We looked to see if they had the ability to show load  
23 reduction. We also needed to make sure that they  
24 were on the 303(d) List or had a TMDL or were State  
25 priority water.

1           So what we did is we went through all the  
2 projects and we -- these projects that are on the  
3 bottom of your chart, except for the top project  
4 because that was one that was already approved by the  
5 ranking committee, those were all ones that staff  
6 felt that could be put forth by the Department for  
7 incremental funds. And what we would do is work with  
8 those to get them ready because we need to really  
9 obligate those funds by December.

10           So that's what we did. If you have any  
11 questions you can let me know. None of the other  
12 projects met those requirements so I feel this was a  
13 fair way to look at the list and to make sure that we  
14 could get those incremental funds out this year.

15 CHAIRMAN HARDECKE: Okay. Now, you've got 3.5  
16 million available and 5.3 requested; is that right?

17 MS. COLLEEN MEREDITH: Right.

18           On both of these, if you look on the base  
19 funding list and the incremental list, the funding  
20 requested is the raw amount of funding that came in  
21 with the projects. Generally the projects are always  
22 negotiated some. These incremental projects several  
23 of those had places in the project that would --  
24 those will have to be cutout because they weren't in  
25 the watershed or they weren't covered by the 303(d)

1 List. Some of them might not have had -- they may  
2 have had other things that we couldn't fund. They  
3 weren't really incremental parts of the project.

4 So by the time that the Staff negotiates these,  
5 I think, there'll be sufficient funding at least to  
6 give the projects -- get a good project and then they  
7 may be able to roll into to 2010 funds for additional  
8 if they can't, you know, get everything done in these  
9 projects they want to. But all these need to be  
10 negotiated.

11 CHAIRMAN HARDECKE: So you think it's within the  
12 scope of negotiation to do something for two, four --  
13 these five?

14 MS. COLLEEN MEREDITH: I do, yeah. I think we could  
15 easily negotiate with these and make sure they get a  
16 good project and that they at least get a good start  
17 and then if they need additional money we can  
18 probably go to a future year funding to help them to  
19 continue on.

20 CHAIRMAN HARDECKE: In the top part of the list  
21 you've got 3.061 million compared to 3.150 so that  
22 wouldn't --

23 MS. COLLEEN MEREDITH: Right.

24 CHAIRMAN HARDECKE: -- be --

25 MS. COLLEEN MEREDITH: That -- that'll also be

1 negotiated and if there's some other funding left  
2 over or something that -- that can always be used for  
3 another project or possibility even if these get  
4 negotiated we might pick up the next base project  
5 that was in line.

6 CHAIRMAN HARDECKE: Okay. So where -- you want us to  
7 look these over and then get back to you?

8 MS. COLLEEN MEREDITH: Well, this is for information  
9 only. We're hoping to get going with these because  
10 we do need to get those funds out by December.

11 CHAIRMAN HARDECKE: Okay. Thank you.

12 MS COLLEEN MEREDITH: Okay. Thank you.

13 CHAIRMAN HARDECKE: Okay. We did No. 9 now up to 10.

14 MS. GEORGANNE BOWMAN: I have a card.

15 CHAIRMAN HARDECKE: Oh, I'm sorry. Sorry about that.

16 MS. GEORGANNE BOWMAN: That's all right.

17 Good afternoon, Commissioner Hardecke,  
18 Commissioners. The one Commissioner left, Scott and  
19 Colleen. I want to thank everybody for reevaluating  
20 these. Like I said at the last meeting we put an  
21 ungodly amount of work into these proposals and I've  
22 talked to the other groups that have worked on these  
23 as well. And we really appreciate the staff time in  
24 going back through these. So thank you very much.

25 CHAIRMAN HARDECKE: Thank you.

1 MR. SCOTT TOTTON: Darrick Steen.

2 MR DARRICK STEEN: Morning Commission. It's getting  
3 late. This will be quick I promise.

4 MR. SCOTT TOTTON: Introduce yourself Darrick.

5 MR. DARRICK STEEN: Yeah. My name is Darrick Steen.  
6 I'm the agricultural unit chief within the Permits  
7 and Engineering Section. Refaat is normally up here.  
8 Refaat had sort of a medical issue yesterday so he's  
9 recovering at home, I think, today. So I'm in his  
10 place. And quite frankly some of the specifics I'm -  
11 - I'm not going to be all that familiar with, but if  
12 you turn to Page -- **Tab No. 10** we look at the permits  
13 backlog tracking graph.

14 It shows a slight uptake in the backlog and  
15 quite honestly I -- after talking with Refaat we both  
16 assume that that will -- will continue to go up just  
17 a little bit due to a number of things. One of those  
18 being expiring -- a bulk of general permits that will  
19 be expiring or have expired or will expire and that  
20 includes the CAFO permit that expires in February of  
21 next year. Of course, you know, we had a staffing --  
22 we continue to have a staffing issue within the  
23 permit section with permit writers. It's my  
24 understanding we do have approval to hire a couple  
25 new permit writers and we do have a new engineer on

1 staff that's working under John Rustige's unit that  
2 will be -- certainly help out, but there's going to  
3 be a lag time between getting them trained and  
4 writing permits and having permits that actually  
5 expire, so -- so that's that page.

6 The next page the water quality review assistant  
7 report, 12 active requests sort of on the docket.  
8 We've got seven of them that are two months or older.  
9 We received six of them since the last Commission  
10 meeting. If I remember right at the last Commission  
11 meeting there was a big -- a large number that had  
12 been received and so they're still trying to catch up  
13 from that large increase four months ago still yet.  
14 So those are the numbers on those.

15 If you have any questions just, please, let me  
16 know. I'm going to move on to -- so the remaining  
17 pages there, I think, are all the review sheets that  
18 have been completed. Now, turn to Page 681; 681 is  
19 my specialty which is the CAFO and agrichemical and  
20 agricultural construction permits. Honestly this  
21 sheet, which is now several weeks old shows I don't  
22 know six or seven of them that are under review,  
23 although a couple of those have certainly been  
24 issued. Since August 16th we have received another  
25 seven applications that aren't on this sheet -- that

1 aren't on this list so for whatever reason there's  
2 been certainly an uptake in construction permitting  
3 activities on the CAFO and agrichemical side of the  
4 house in the last -- well, let's say since July 1.  
5 In fact, we've -- I'm seeing maybe as many as 11 or  
6 12 applications in the last I don't know 45 days that  
7 we've received. And it looks like we only received  
8 maybe 13 or 14 of them in the -- in the first six  
9 months of 2010.

10 So I don't know if that shows the agricultural  
11 community is -- the economy is picking up a little or  
12 if it's just a time of the year where construction  
13 permits are coming in for next year, next year's  
14 construction season. I don't know yet. Maybe in a  
15 month or two we'll have a better idea.

16 Page 683 starts with -- shows the general  
17 permits that are expiring when they're issued and  
18 expired and it will note that there are several of  
19 them that are expiring in 2011 including the CAFO  
20 permit. We have about 530 facilities, CAFO  
21 facilities covered under that general permit. And I  
22 might make a note that -- that we are making good  
23 progress on the renewal of those 500 plus permits.  
24 Renewal applications were sent out in July. We  
25 received a number of those back. We have a draft

1 general permit on public notice right now. It'll  
2 come off public notice in a few weeks and we've --  
3 we've tried to -- tried to do some outreach to the  
4 stakeholder groups. We had an informational meeting  
5 a couple of weeks ago on that permit. And,  
6 basically, what we're doing is we're issuing a  
7 permit, a general permit; we're extending -- we're  
8 really extending the current general permit for two  
9 more years. It's -- it's got some new requirements  
10 in it since this last regulatory change, but this  
11 permit will last for two years instead of the normal  
12 five. And the primary reason for that is it will  
13 give us essentially two more years to update our  
14 regulations to reflect the new EPA rule. Hopefully  
15 take care of some fee issues that are ongoing.

16 But, also, another reason was because EPA had --  
17 EPA headquarters had committed to producing some  
18 permit writers guidance earlier in the year that has  
19 yet to -- yet to be published, final. I know that  
20 they're working on it. I've seen some preliminary  
21 drafts of that guidance, but it hasn't -- hasn't hit  
22 the streets yet. So that guidance is going to be  
23 certainly important for Missouri and other states as  
24 we develop what will be a -- you know, the next CAFO  
25 permit, NPDES permit. There's a lot of -- certainly

1 still a lot of questions on how -- on how to do that  
2 in -- in the State.

3 So for those reasons and others we needed to  
4 extend this general permit for two more years, which  
5 is what we proposed and so far every -- everything  
6 seems to be going smooth on that path. So it looks -  
7 - everything looks good on the permit side for the  
8 CAFOs. I will say, also, that we're -- we are  
9 continuing the rulemaking process for our Phase 2  
10 rulemaking. We've got a couple workgroup meetings  
11 scheduled in the next couple months. And so you'll  
12 see a little bit more activity on that front and  
13 they're -- those rulemakings, you know, will continue  
14 through 2011 and probably finalized in early 2012.

15 That is all I have unless there are any  
16 questions.

17 (No response.)

18 CHAIRMAN HARDECKE: Thank you.

19 Okay. **No. 11**, Joe.

20 MR. JOE BOLAND: Good afternoon, Mr. Chairman,  
21 members of the Commission. I'm Joe Boland with the  
22 Financial Assistance Center and I'll be very brief as  
23 well. Very quickly on our \$50 million bond sale  
24 update we're nearing the end of that. We've got  
25 about \$47 and a half million already awarded and in

1 the process of award. So we're -- we only have a few  
2 more million to get out the door and we have projects  
3 that are very active right now in getting -- getting  
4 to bid, out to bid and we're going to be making those  
5 awards here in the next few months. So that should  
6 be wrapping up that \$50 million effort.

7 Moving on to the recovery act or the stimulus  
8 projects, to date we -- your packet has, as of the  
9 date of the preparation of these materials we had  
10 pushed out about \$35 and a half million just in ARRA  
11 funds alone with another \$12 and a half million of our  
12 base program funds. That -- as of yesterday, we've  
13 pushed out about \$60 million altogether. So it has  
14 increased and the pace of the construction during the  
15 summer, obviously, is helping that. So we're --  
16 we're moving right along with those. Let's see --

17 Related to that I -- one of the concerns  
18 Commissioner Tupper brought up earlier was the green  
19 projects and those types of activities are  
20 requirements in the recovery act itself and the  
21 projects. I think it's important to note that right  
22 now we have four different agencies reviewing us  
23 right now. We have four -- four agencies auditing  
24 us, one, is the State Auditors. EPA is coming next  
25 Monday for a program review. We also have Joint

1 Committee on Legislative Research that has Staff in  
2 our offices right now reviewing everything. And  
3 these aren't just financial reviews. These are  
4 performance reviews as well in some of the cases.  
5 And EPA will be looking at all of our green projects, and  
6 the Buy American components. So they'll be diving  
7 into some of those details that we talked about  
8 earlier, so --

9 So suffice it to say we have a lot attention right  
10 now.

11 COMMISSIONER TUPPER: Good.

12 MR. JOE BOLAND: And we also have our independent  
13 auditors coming as well so we'll have -- we'll have  
14 four agencies looking at us.

15 CHAIRMAN HARDECKE: Are you saying you have  
16 auditors auditing auditors?

17 MR. JOE BOLAND: It's -- I'll just say that they are  
18 crawling over each other for space right now, so --

19 But we're doing our best to accommodate their  
20 needs and giving them everything they need.

21 One other issue very quickly we mentioned or  
22 Doug mentioned earlier that we may need a special  
23 teleconference maybe end of September or into October  
24 to move some of the projects that are just on the  
25 contingency list moved up to the fundable list so we

1 can move forward with making some loans with them as  
2 we continue to finalize our new leveraged bond sale  
3 this fall.

4 So I'm hoping that would not be a problem but,  
5 again, right now the preliminary schedule is looking  
6 like we would close on this new bond issue first part  
7 of November. As of right now, it looks like that  
8 might get pushed back a couple weeks. So we may --  
9 we may be coming to you earlier part of October just  
10 to make some of those changes moving those projects  
11 up.

12 So that's really about all I had unless you had  
13 any further questions.

14 (No response.)

15 CHAIRMAN HARDECKE: Thank you.

16 MR. JOE BOLAND: All right. Thank you.

17 CHAIRMAN HARDECKE: Phil Walsack.

18 MR. PHIL WALSACK: Phil Walsack with Missouri Public  
19 Utility Alliance. I'll make this brief.

20 While there are days we seem like we're  
21 opponents and adversaries with the Department there  
22 are other days when the Department has examples of  
23 shining success. There's a letter as I think you are  
24 aware from U.S. Representative James Oberstar from  
25 the 8th District of Minnesota congratulating Joe

1 Boland and his staff and the environmental finance  
2 center for moving money with the ARRA project faster  
3 and more thoroughly than any other state in the  
4 Union.

5 States for which I've worked, for states for  
6 which I've lived in so to be number one ranking in  
7 the United States believe in the ARRA project or  
8 don't believe in federal stimulus either way we ran  
9 the football and we ran it all the way.

10 That is important to note that Missouri outdid  
11 many states that are much bigger than we are, have  
12 much bigger staff and much bigger budgets. So to  
13 have moved our money the way that Joe Boland and his  
14 staff did they're to be commended for that  
15 recognition from U.S. Representative Oberstar.

16 Thank you.

17 CHAIRMAN HARDECKE: Congratulations, Joe.

18 COMMISSIONER TUPPER: Well, done.

19 CHAIRMAN HARDECKE: Okay. Thank you. **Tab No. 12.**

20 MS. CAROL GAREY: Good afternoon, Commissioners. I'm  
21 Carol Garey, rule coordinator for the Water  
22 Pollution Control Branch. We wanted to talk to you  
23 just a little bit this afternoon about statement of  
24 cost reviews and what that entails and particularly  
25 for two important rules, 7.031 Water Quality

1 Standards and 6.300 CAFO.

2 7.031 Water Quality Standards Antidegradation  
3 Implementation Procedure was effective August 30th,  
4 2008. And CAFO 6.300 was effective February 29th,  
5 2009. Statements of actual cost are required for all  
6 rulemakings under Section 536. So we do these for  
7 each of the rulemakings. But because the actual cost of these  
8 amendments did not exceed their public fiscal note estimated cost  
9 by 10 percent or more no costs are required to be  
10 published in the Missouri Register for either of  
11 these rules.

12 Statements of actual cost reviews are typically done  
13 after the first full fiscal year of implementation  
14 from the effective date of the rule. For 7.031 the  
15 amendment established requirement for antidegradation  
16 review for all new and expanded an discharges, the actual cost --  
17 (Tape Three, Side A concluded.)

18 MS. CAROL GAREY: -- was \$2,692,418 below the  
19 estimated cost of \$4,476,522. The actual cost was  
20 roughly 40 percent less than the original estimate.

21 Now, a portion of the overall cost, the  
22 Department cost, did exceed the public fiscal note  
23 cost estimate. Department costs were more  
24 principally because a less involved review process  
25 was anticipated at that time. Subsequently to the

1 rule the Staff did expend considerable time with  
2 individual applicants, explaining the process and  
3 assisting with preparing the application. Applicant  
4 costs were lower than they would have otherwise  
5 experienced by working with staff. Several workshops  
6 were hosted and detailed Internet materials were  
7 prepared and published.

8 Now, regarding the estimated cost for the  
9 municipal facilities the original cost assumed that  
10 there would be 21 projects that would be required to  
11 undertake an evaluation of existing water quality.  
12 Whereas, in reality the comprehensive reviews were  
13 only required on 12 projects so that the lower number  
14 was partially a result of a slow down, we think, in  
15 economic activity. There were also lower lab and  
16 equipment costs as well as applicant decisions to  
17 select non-degrading or minimal degrading  
18 alternatives.

19 For growing the analysis of treatment  
20 alternatives and use of consultants so the no  
21 discharge or minimal degrading alternatives resulted  
22 in significant environmental improvements such that  
23 Missouri's antidegradation program may now be  
24 characterized as an effective regulatory tool where  
25 water quality is improved or at the least maintained.

1           Now, moving on to the second one 6.300,  
2 Concentrated Animal Feeding Operation. The report  
3 here after the first full year, fiscal year  
4 implementation as required by State law, July 1 of  
5 this year is also positive in a sense that the costs  
6 did not exceed the public original estimate by 10  
7 percent or more.

8           Actual costs for CAFO were based on permit  
9 applications and annual reports received and reviewed  
10 during the reporting period. The CAFO amendment  
11 established some new requirements, new loss assessment and  
12 new annual reporting requirements. Department costs  
13 indicated no new costs that were attributed to the  
14 swine greater than 55 pound animal unit threshold  
15 change. Since no new permit applications resulting  
16 from this change were actually received the NPDES fee  
17 fund revenue, original estimate, was based on  
18 collecting a fee for an estimated five new operating  
19 permit applications.

20           There were no applications. There were no fees  
21 collected. Additional Staff review for the projected  
22 applications was less than expected because only 18  
23 new construction permit applications were actually  
24 submitted instead of 60. The -- this decrease  
25 is most probably a result, again, of a slowing

1 economy. There were 210 fewer staff hours expended  
2 than originally anticipated and staff time was  
3 primarily needed for the expanded review of the new  
4 reporting requirements.

5 Overall Department costs or in this case NPDES  
6 permit fee fund expenses incurred were \$34,639  
7 below the public fiscal note estimate of \$51,166. In  
8 actuality then the actual costs were only 32 percent  
9 of what was originally anticipated.

10 So we think this is positive news and wanted you  
11 to understand that this really wraps up the rule.  
12 Are there any comments or questions that occur to  
13 you?

14 CHAIRMAN HARDECKE: Sounds good to save a little  
15 money.

16 MS. CAROL GAREY: Yes.

17 COMMISSIONER TUPPER: Yep.

18 MS. CAROL GAREY: Yes, yes, it does.

19 Thank you.

20 CHAIRMAN HARDECKE: Thank you.

21 I'm at the end of my book. Scott do you have an  
22 update.

23 MR. SCOTT TOTTON: Jenny's on before I am.

24 MS. JENNIFER FRAZIER: I do.

25 I have just a very quick **legal report**. It

1 mainly has to do with reporting to the Commission  
2 that on August 17th and 18th the Attorney General's  
3 Office hosted the Lake of the Ozarks symposium called  
4 Environmental Roadmap for the Future. \_ You were all  
5 invited. And Chairman Hardecke came, I think, for  
6 one day and I just want to report that from our  
7 perspective it was a huge success, very positively  
8 received. We had at least over 100 in the audience  
9 both days sitting there for over eight hours  
10 listening to the testimony. We could not have done  
11 it without the cooperation of the Department and the  
12 Lake of the Ozarks Watershed Alliance. And I'm sorry  
13 that Donna Swall left right before I talked, but  
14 Warren if you could carry that back as a board member  
15 of LOWA. We really appreciated their guidance and  
16 participation and just all the assistance we  
17 received.

18 And we should be coming out with a report in a  
19 month or two when I can get around to writing it on  
20 what we learned and with some recommendations for  
21 what we think should or could happen to -- for the  
22 Lake long-term protection.

23 And just really appreciate the Department's  
24 cooperation and Tim is in the back of the room as  
25 well. We had a lot of excellent presentations. Our

1 only regret was that we just couldn't afford  
2 everybody hours and hours because it's such a  
3 complicated issue and we just had a lot of experts  
4 and a lot of very good input.

5 So I just wanted to report to the Commission on  
6 that.

7 CHAIRMAN HARDECKE: Yeah. And I will say it was very  
8 informative and I think the Attorney General Staff  
9 did a good job. So thank you.

10 **Scott (Director's report).**

11 MR. SCOTT TOTTEN: I have a request to the  
12 Commission. We normally would have our January  
13 meeting on the first Wednesday, which is January the  
14 5th. That conflicts with -- with certain -- certain  
15 schedules and I would like to move that back to  
16 January the 12th, one week after that, if that's okay?

17 I don't hear any objections, I guess, it's far enough in  
18 advance. But that does have an affect on one of the  
19 things that we voted on today. We have two prepared  
20 documents for the construction specifications, the  
21 rule on construction guidelines, a design guide for  
22 construction of wastewater facilities. And the copy  
23 in your blue packet is the copy that has the dates for  
24 the rulemaking process and it included a hearing on  
25 January the 12th.

1 I'd like to also let the Commission know that  
2 the Commission currently has in its rulemak- -- rules  
3 and regulations the underground storage tank  
4 requirements. Those have been administratively  
5 reassigned to the Hazardous Waster Commission and the  
6 Hazardous Waste Commission is in the process of  
7 revising those regulations and moving those over into  
8 their -- their chapters of the regulations, so --

9 When that process is completed then this  
10 Commission will no longer have that jurisdiction over  
11 those areas anymore

12 COMMISSIONER TUPPER: Would they take anything else?

13 MR. SCOTT TOTTEN: Are they tak- -- they sending any  
14 money with that you think? I don't know.

15 And then I'd just like to also take this  
16 opportunity to recognize Mr. Tom Herrmann, former  
17 Chairman of this Commission, who served for many,  
18 many years and ably so, passed away recently. And I  
19 just wanted to recognize him -- his presence today  
20 because all of us in some way, shape or form were  
21 shaped by his presence. And, I think, we're better  
22 people for that, so I just wanted to say that.

23 And this will be my last Commission meeting, I guess, as  
24 acting director. John will take over on the -- on  
25 the 15th or 16th of September and he will be here for

1 the November meeting.

2 Thank you.

3 CHAIRMAN HARDECKE: (Inaudible) or are you just  
4 changing the date?

5 MR. SCOTT TOTTEN: No, we're just changing the date.

6 CHAIRMAN HARDECKE: Okay. Is that it?

7 (No response.)

8 **CHAIRMAN HARDECKE: Motion to adjourn?**

9 **COMMISSIONER TUPPER: So moved.**

10 **COMMISSIONER EASLEY: Second.**

11 **CHAIRMAN HARDECKE: I think we'll all vote for that.**

12 Thanks for coming.

13 (Tape Three, Side B concluded.)

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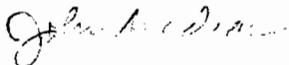
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CERTIFICATE OF TRANSCRIPTIONIST

I, DANIELLE Y. MOSER, within and for the State of Missouri, do hereby certify that the audio transcription in the foregoing audio was transcribed to the best of my ability and therefore 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 audio 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.

DANIELLE Y. MOSER, Notary Public  
Commission # 07398805  
Commission Expires 01-08-2011

Respectfully Submitted,



John Madras  
Acting Director of Staff

