

**DRAFT
MINUTES OF THE
MISSOURI CLEAN WATER COMMISSION MEETING
Lewis and Clark State Office Building
1101 Riverside Drive
Jefferson City, Missouri**

September 11, 2013

Present

Todd Parnell, Chair, Missouri Clean Water Commission
Dennis Wood, Missouri Clean Water Commission
Wallis Warren, Missouri Clean Water Commission
Buddy Bennett, Missouri Clean Water Commission
Ashley McCarty, Missouri Clean Water Commission
John Madras, Director of Staff, Missouri Clean Water Commission
Daren Eppley, Legal Counsel, Missouri Clean Water Commission
Malinda Steenbergen, Secretary, Missouri Clean Water Commission

Bob Angelo, Environmental Protection Agency, Lenexa, Kansas
Joseph P. Bachant, Holts Summit, Missouri
Melissa Bagley, Environmental Protection Agency, Lenexa, Kansas
Brenda Bardwell, Missouri Department of Natural Resources, Jefferson City, Missouri
Karen Bataille, Missouri Department of Conservation, Columbia, Missouri
Nicholas Bauer, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Susan Bloomer, Missouri Department of Natural Resources, Jefferson City, Missouri
Michael Bollinger, Ameren, St. Louis, Missouri
Robert J. Brundage, Newman, Comley & Ruth P.C., Jefferson City, Missouri
John Bryan, Missouri Poultry Federation, Jefferson City, Missouri
David Casaletto, Ozarks Water Watch, Kimberling City, Missouri
Matt Combes, Department of Conservation, Kirksville, Missouri
Becky Cripe, Missouri Department of Natural Resources, Jefferson City, Missouri
Chad Davis, Trenton Municipal Utilities, Trenton, Missouri
John DeLashmit, Environmental Protection Agency, Lenexa, Kansas
Cameron Eisterhold, Missouri Department of Natural Resources, Jefferson City, Missouri
Joshua Ernst, Missouri Department of Natural Resources, Jefferson City, Missouri
Angela Falls, Missouri Department of Natural Resources, Jefferson City, Missouri
Jim Farrell, Great Rivers Greenway, Ballwin, Missouri
Jeff Fisher, City of Belton, Belton, Missouri
Ed Galbraith, Barr Engineering, Jefferson City, Missouri
Doug Garrett, Missouri Department of Natural Resources, Jefferson City, Missouri
Emilie Twinning Gerdes, Missouri Department of Natural Resources, Jefferson City, Missouri
Steve Goehl, D.A. Davidson & Co., Kansas City, Missouri
Peter Goode, Washington Univ./Missouri Coalition for the Environment, St. Louis, Missouri
Danelle Haake, Stream Team, St. Louis, Missouri
John Hoke, Missouri Department of Natural Resources, Jefferson City, Missouri

Jay Hoskins, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Eric Karch, River des Peres Watershed Coalition, St. Louis, Missouri
J. D. Kehrman, City of Nevada, Nevada, Missouri
Chris Klenkler, Missouri Department of Agriculture, Jefferson City, Missouri
John Lodderhose, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Jim Macy, Missouri Department of Natural Resources, Jefferson City, Missouri
Steve Mahfood, Wildwood, Missouri
Chuck McCulloh, City of Belton, Belton, Missouri
Refaat Mefrakis, Missouri Department of Natural Resources, Jefferson City, Missouri
Steve Meyer, City of Springfield, Springfield, Missouri
Chris Miller, Missouri Department of Natural Resources, Jefferson City, Missouri
Marty Miller, Missouri Department of Natural Resources, Jefferson City, Missouri
Jan Millington, City of Springfield, Springfield, Missouri
Steve Nagle, River des Peres Watershed, St. Louis, Missouri
Holly Neill, Missouri Stream Team Watershed Coalition, Highlandville, Missouri
Kevin Perry, REGFORM, Jefferson City, Missouri
Precious Phiri, Missouri Coalition for the Environment, St. Louis, Missouri
David Potthast, Missouri Department of Natural Resources, Jefferson City, Missouri
John Rustige, Missouri Department of Natural Resources, Jefferson City, Missouri
Todd Sampsell, The Nature Conservancy, Eureka, Missouri
Dan Sherburne, St. Louis, Missouri
Kat Logan Smith, MCE, St. Louis, Missouri
Jeff Starr, Missouri Department of Natural Resources, Jefferson City, Missouri
Darrick Steen, Barr Engineering, Jefferson City, Missouri
Trent Stober, HDR, Columbia, Missouri
Jeffrey Tomich, Post-Dispatch, St. Louis, Missouri
Roger Walker, REGFORM, Jefferson City, Missouri
Phil Walsack, Missouri Public Utility Alliance, Columbia, Missouri
Sunny Wellesley, Environmental Protection Agency, Lenexa, Kansas
John Wenzlick, Trout Unlimited, Jefferson City, Missouri
Kristol Whatley, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Chris Wieberg, Missouri Department of Natural Resources, Jefferson City, Missouri
Mark Young, Kansas City Water Services, Kansas City, Missouri

CALL TO ORDER

Chair Parnell called the meeting of the Missouri Clean Water Commission to order on September 11, 2013 at 9:00 a.m., at the Lewis and Clark State Office Building, 1101 Riverside Drive, Jefferson City, Missouri.

Chair Parnell made introductions of the Commissioners, Staff Director, Legal Counsel, and the Commission Secretary.

The Commission had a moment of silence in memory of those that lost their lives on September 11, 2001.

The Commission honored Dr. Samuel Hunter by a resolution in his name.

ADMINISTRATIVE MATTERS

Special Election of Missouri Clean Water Commission's Vice-Chair

Commissioner Warren made a motion to elect Commissioner Dennis Wood as the Vice-Chair for the remainder of 2013. Commissioner Bennett seconded the motion. The motion passed with a unanimous voice vote.

Public Hearing – 10 CSR 20-7.031 Water Quality Standards Regulations **Agenda Item #1**

The Commission conducted a public hearing for the proposed draft amendment for 10 CSR 20-7.031 Water Quality Standards Regulation. John Hoke, Watershed Protection Section provided testimony for the Department explaining the proposed amendment. Testimony was also provided by:

Steve Mahfood, Wildwood, Missouri
Kevin Perry, REGFORM
Robert Brundage, Newman, Comley and Ruth P.C
Peter Goode, Washington University/Missouri Coalition for the Environment
Steve Meyer, City of Springfield
Trent Stober, HDR
Ed Galbraith, Barr Engineering
Phil Walsack, Missouri Public Utility Alliance
Joseph Bachant, Private Citizen, Holts Summit, Missouri
Eric Karch, River des Peres Watershed Coalition
Holly Neill, Missouri Stream Team Watershed Coalition
Danelle Haake, Stream Team
Todd Sampsell, The Nature Conservancy
Steve Nagle, River des Peres Watershed
Karen Bataille, Missouri Department of Conservation

Mr. Hoke noted that the public comment closes on September 18, 2013, and staff will review comments and develop a recommendation for Commission action at the November 6, 2013 meeting.

No action was taken by the Commission. A court reporter was present and an official transcript of the public hearing is attached.

Public Hearing – 10 CSR 20-7.015 Effluent Regulations
Agenda Item #2

The Commission conducted a public hearing for the proposed amended rule 10 CSR 20-7.015 Effluent Regulations. John Rustige, Engineering Section provided testimony for the Department. Testimony was also provided by:

Roger Walker, REGFORM
Phil Walsack, Missouri Public Utility Alliance
Kevin Perry, REGFORM
Robert Brundage, Newman, Comley, & Ruth P.C.
Trent Stober, HDR

Mr. Rustige noted that the public comment closes on September 18, 2013, and staff will review comments and develop a recommendation for Commission action at the November 6, 2013 meeting.

No action was taken by the Commission. A court reporter was present and an official transcript of the public hearing is attached.

Approval of the August 21, 2013 Missouri Clean Water Commission Meeting Minutes
Agenda Item #3

Commissioner Bennett made a motion to approve the August 21, 2013 meeting minutes as submitted. Commissioner Warren seconded the motion. The motion passed with a roll call vote:

Commissioner Wood:	Yes
Commissioner Bennett:	Yes
Commissioner McCarty:	Yes
Commissioner Warren:	Yes
Commissioner Leake:	Not in Attendance
Commissioner Cowherd:	Not in Attendance
Chair Parnell:	Yes

Fiscal Year 2014 Clean Water State Revolving Fund Intended Use Plan
Agenda Item #4

Doug Garrett, Financial Assistance Center presented the Fiscal Year 2014 Clean Water State Revolving Fund Intended Use Plan. Mr. Garrett noted that a public hearing was held before the Commission on July 18, 2013 and the comment period subsequently closed on July 25, 2013.

Mr. Garrett noted that written comments were received from the Cities of Jefferson and Springfield and that staff had provided each community with an acknowledgement of receipt of their comments. He reported that as a result of those comments, staff had clarified the section of the Intended Use Plan related to interest earnings but no other changes were made based on the comments received from these communities. Additionally, Mr. Garrett noted changes to the funding lists due to applicants meeting the Commission's readiness to proceed. Also, the village of Sunrise Beach project was moved from the Outstate Fundable List to the Disadvantaged Community Fundable List resulting in a reduction of loan funding while providing grant funds.

Phil Walsack, Missouri Public Utility Alliance expressed his concerns regarding the State Revolving Fund administrative fees and his desire for the Department to reduce the fees.

Commissioner Bennett made a motion to approve the adoption of the Fiscal Year 2014 Clean Water State Revolving Fund Intended Use Plan and Priority List as presented. Commissioner Warren seconded the motion. The motion passed with a roll call vote:

Commissioner Bennett:	Yes
Commissioner McCarty:	Yes
Commissioner Warren:	Yes
Commissioner Leake:	Not in Attendance
Commissioner Cowherd:	Not in Attendance
Commissioner Wood:	Yes
Chair Parnell:	Yes

Small Borrower Loan for the City of Otterville
Agenda Item #5

Jim Macy, Financial Assistance Center presented the city of Otterville's request for a small borrower loan of \$100,000 to partially fund the costs of constructing an ultra-violet disinfection system to meet disinfection requirements as per the schedule of compliance in their current National Pollutant Discharge Elimination System (NPDES) permit.

Commissioner Wood made a motion to approve the proposed small borrower loan to the city of Otterville for \$100,000. Commissioner Warren seconded the motion. The motion passed with a roll call vote:

Commissioner McCarty: Yes
Commissioner Warren: Yes
Commissioner Leake: Not in Attendance
Commissioner Cowherd: Not in Attendance
Commissioner Wood: Yes
Commissioner Bennett: Yes
Chair Parnell: Yes

Small Borrower Loan for the City of Risco
Agenda Item #6

Jim Macy, Financial Assistance Center presented the city of Risco's request for a small borrower loan of \$44,150 to partially fund the costs of constructing an ultra-violet disinfection system to meet disinfection requirements that will be required upon renewal of their National Pollutant Discharge Elimination System (NPDES) permit.

Commissioner Warren made a motion to approve the proposed small borrower loan to the city of Risco for \$44,150. Commissioner McCarty seconded the motion. The motion passed with a roll call vote:

Commissioner Warren: Yes
Commissioner Leake: Not in Attendance
Commissioner Cowherd: Not in Attendance
Commissioner Wood: Yes
Commissioner Bennett: Yes
Commissioner McCarty: Yes
Chair Parnell: Yes

PRESENTATIONS

Director's Report

John Madras, Director, Water Protection Program reported the following items:

- The Water Protection Forum is scheduled for October 3, 2013.
- There are two rules under development that will be before the Commission. The Permit Rule should be completed in draft this year and ready for Commission action in the spring. The fees rule is planned to be heard by the Commission November 6, with an order of rulemaking November 20 to meet the statutory requirement of submitting the promulgated rule to the Joint Committee on Administrative Rules by December 1.
- The Environmental Protection Agency's recent announcement of new aquatic life criteria for ammonia will have significant requirements for many wastewater treatment facilities, many of which are presently required to upgrade to meet the current ammonia criteria. The

Department will work with facilities so that there is not wasted effort achieving the current standard with an additional upgrade needed to meet the new one.

- The Iowa League of Cities federal court decision related to wastewater blending may have effects on cities with voluntary compliance agreements addressing the elimination of overflow basins. The Environmental Protection Agency's deadline for appealing to the Supreme Court is October 8 and the Department is reviewing the situation in light of the decision issued.

No action taken by the Commission.

Our Missouri Waters Update

Robert Stout, Director's Office, Department of Natural Resources updated the Commission on the Our Missouri Waters initiative. Mr. Stout reported that the Lower Grand River Watershed Summit was held September 10th in Brunswick. He also noted the Big River Watershed Summit is scheduled for October 10th. No action taken by the Commission.

Public Comment and Correspondence

Several individuals addressed the Commission, including:

- Phil Walsack, Missouri Public Utility Alliance expressed his concerns regarding the new ammonia standards; his concerns regarding the Iowa League of Cities federal court decision related to wastewater blending/bypassing; and noted he was in attendance at the Lower Grand Watershed Summit and it was well attended.
- Kevin Perry, REGFORM expressed his thanks to all that attended and contributed to the Missouri Water Seminar on September 5 and 6 to make it such a success.
- David Casaletto, Ozarks Water Watch asked for clarification from Mr. Rustige regarding the phosphorus exemption.

No action was taken by the Commission.

Future Meetings

No action was taken by the Commission.

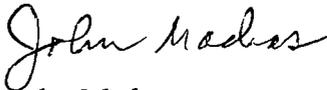
ADJOURNMENT OF MEETING

Commissioner Wood made a motion to adjourn the meeting. Commissioner Warren seconded the motion. The motion passed with a roll call vote:

Commissioner Leake:	Not in Attendance
Commissioner Cowherd	Not in Attendance
Commissioner Wood:	Yes
Commissioner Bennett:	Yes
Commissioner McCarty:	Yes
Commissioner Warren:	Yes
Chair Parnell:	Yes

The meeting adjourned at 12:25 p.m.

Respectfully Submitted,



John Madras
Director of Staff

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1 DEPARTMENT OF NATURAL RESOURCES
MISSOURI CLEAN WATER COMMISSION

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In Re: 10 CSR 20-7.031
Water Quality Standards Regulations

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Public Hearing

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September 11, 2013

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18 (Starting time of hearing: 9:05 a.m.)

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1 DEPARTMENT OF NATURAL RESOURCES
2 MISSOURI CLEAN WATER COMMISSION

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4 In Re: 10 CSR 20-7.031
5 Water Quality Standards Regulations
6 Public Hearing

7 September 11, 2013
8 Department of Natural Resources
9 Lewis and Clark State Office Building
10 LaCharrette/Nightingale Conference Rooms
11 1101 Riverside Drive
12 Jefferson City, Missouri

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BEFORE: Todd Parnell, Chairman
Buddy Bennett, Commissioner
Wallis Warren, Commissioner
Dennis Wood, Commissioner
Ashley McCarty, Commissioner

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ALSO PRESENT: John Madras, Director
Water Protection Program
Daren Eppley, Counsel for Commission
Assistant Attorney General
Melinda Steenbergen,
Commission Secretary

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REPORTED BY:

22

Ms. Pamela S. Gentry, CCR
Missouri CCR No. 426

23

Midwest Litigation Services
3432 West Truman Boulevard

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Suite 207
Jefferson City, MO 65109

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(573) 636-7551

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1 (Starting time of meeting: 9:05 a.m.)

2 P R O C E E D I N G S

3 CHAIRMAN PARNELL: Next on the agenda is
4 the public hearing for 10 CSR 20-7.031, Water Quality
5 Standards Regulations. The purpose of this hearing is to
6 provide the public with an opportunity to comment on the
7 proposed amendment. The public hearing is not a form for
8 debate or resolution of issues. Commission asks the
9 testimony be to the point and as brief as possible.

10 I'll go further than that and ask all
11 speakers please be mindful of everybody's time today. We
12 would appreciate you keeping your comments to five
13 minutes, if at all possible, and please avoid just
14 repeating what the speaker in front of you has said.
15 We're all anxious to hear what you have to say, but we're
16 also mindful of everybody's time.

17 The Commission will hear first from the
18 Department Staff; the public will then have an opportunity
19 to comment. We ask that all individuals providing
20 testimony fill out an attendance card so our records are
21 complete. Please remember to show on your card the desire
22 to show on this -- to testify on this amendment so I can
23 call you up to the microphone.

24 Please speak clearly into the microphone
25 and begin by identifying yourself to the Court Reporter.

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1 All in the hearing testimony today, Department will review
2 testimony presented along with any further comments along
3 with the proposed rule. Commentary ends September 18th,
4 2013. Commission plans to review the Department's final
5 recommendation on the proposed rule at the meeting
6 scheduled for November 6th, 2013.

7 Commission will decide at that meeting
8 whether to accept the Department's recommendations.

9 Court Reporter will now swear in anyone
10 wishing to testify at this public hearing before the Clean
11 Water Commission today. Anyone wishing to provide
12 testimony, please stand.

13 (Whereupon, the oath was administered by
14 the Court Reporter to all standing.)

15 THE COURT: Thank you. We'll start with
16 John Hoke making presentation from the Watershed
17 Protection Section.

18 MR. HOKE: Thank you, Mr. Chairman.
19 Commissioners, my name is John Hoke. It's H-o-k-e, for
20 the record. I'm Chief of the Watershed Protection Section
21 here in the Water Protection Program Department.

22 Many individuals are here wanting to
23 testify, so I'll keep my statements brief. It's my
24 pleasure to present to the Commission for public comment
25 Water Rule Amendment 10 CSR 20-7.031.

1 First, from the prospective, this
2 rulemaking is 13 years and 3 days in the making. It has
3 seen four Department Directors, five Water Protection
4 Departments and Acting Directors, three Section Chiefs,
5 and multiple Water Commissioners. There have been many
6 hours, hundreds of hours, of stakeholders meetings,
7 discussions, and presentations related to the topics that
8 are contained in this rulemaking.

9 At its core is a proposal to expand the
10 Clean Water Act protections to over 90,000 miles of
11 Missouri streams and over 2100 lakes in the state. This
12 is a good thing. It provides a framework for tiered
13 aquatic life uses and of the unique characteristics and
14 diversity of the Missouri waters. This, too, is a good
15 thing.

16 The amendment also provides mechanisms for
17 compliance with the new rules through schedules of
18 compliance, variances, and use attainability analysis.
19 Also a very good thing.

20 The regulatory impact for this rule was
21 open for public comment from November 23, 2013, to January
22 22, 2013. Comments, responses to the R and R were
23 responded to by the Department and posted on the Water
24 Protection Programs Rules and Development web page.

25 On June 17, 2013, the proposed amendment 10

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1 CSR 20-7.031, Water Quality Standards, was placed for
2 public notice. The public comment period extended from
3 that date, the date it was published in the Missouri
4 Register, through september 18, 2013, as Mr. Chairman
5 said.

6 Even with all the work that has been done,
7 we are still not finished. There is still business that
8 needs to be attended to, and we present to you at this
9 time the Department is willing to work with stakeholders
10 to finish that unended business.

11 You will hear that one piece of that
12 business is a use attainability analysis protocol or
13 mechanisms to determine the highest attainable use of
14 aquatic life within the State of Missouri. The Department
15 has already expended effort on a national protocol. So,
16 we will not be focusing on that effort; however, we will
17 be using a protocol to determine the highest attainable
18 aquatic life use in any of the waters brought in current
19 rulemaking and make them brought in in the future.

20 We seem to have a UAA protocol that
21 provides for aquatic life that is predictable,
22 strengthened, transparent, and streamlined so, that,
23 regardless, you're adding, modifying, or removing a use.
24 So, the way we treat these waters is standard throughout
25 the process.

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1 As I said, we are committed to work with
2 the stakeholders to resolve this and any other unfinished
3 business; and, again, I appreciate the opportunity and
4 your patience as we go through this process to have a rule
5 that best protects Missouri waters as we see that it needs
6 to be. And, with that, I'll take any questions that you
7 may have.

8 CHAIRMAN PARNELL: You imply by your
9 comments that you will have use attainability protocol by
10 the time it's presented to us in November?

11 MR. HOKE: By the adoption, yes. We are
12 working with a technical subcommittee to work out the
13 fundamental core issues that remain on the UAA protocol so
14 we may have something to present to you in November.

15 CHAIRMAN PARNELL: Any questions?

16 (No response.)

17 CHAIRMAN PARNELL: Thank you very much.

18 MR. HOKE: Thank you very much.

19 CHAIRMAN PARNELL: Let's proceed with
20 comments from the floor, in no particular order here, just
21 as handed to me.

22 Steve Mahfood, who is not representing
23 anyone other than himself, according to this card. And
24 Steve, welcome.

25 MR. MAHFOOD: Thank you, Mr. Chairman,

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1 Commission members. I appreciate being here. I know you
2 have many comments, and I'll speak to you for just a quick
3 moment.

4 Again, my name is Steve Mahfood. I'm here
5 as a private citizen and former Director of the
6 Department. I happen to be one of those four people that
7 John mentioned a minute ago. We didn't get it done.
8 Tried hard, worked hard, Dennis was part of that back
9 then, but just didn't happen.

10 I'm here to ask you to support these
11 proposed water quality standard regulations. It's been a
12 long time; it's been a difficult road. To this point, we
13 are counting multiple lawsuits, multiple problems and
14 issues. You heard a lot from interested parties,
15 interested groups here in the State. You've taken the
16 time, Staff has taken the time to bring together people
17 that wouldn't normally talk with each other about these
18 issues and put them in a package that I think can really
19 work.

20 It's not over with, as John said. There
21 are some other issues that have to be dealt with; and,
22 although the rule is just the beginning, in my mind, and
23 it's close to achieving the promise of the Clean Water Act
24 and it's necessary and critical, it is the major step
25 that's going to lead to a blueprint for improvements and

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1 protection of Missouri water quality. Unfortunately, we
2 still have some other steps to go, but I'm telling you,
3 this is such a major major leap forward for our State.
4 And, looking back in my career all these years and seeing
5 what did and didn't happen, this is so important.

6 This is also going to bring assurance and
7 known standards to water users, to the agricultural
8 community, to citizens, to those of us who care about
9 water quality here in Missouri, which is, I think, all of
10 us, all of us citizens in the State. So, it's an
11 important first step in assuredness of making things very
12 transparent and crystal clear to people who need to hear
13 that clarity.

14 I know you're going to hear from a lot of
15 people here today. You'll hear more between now and
16 November, but I implore you to look out for the interests
17 of all Missourians and move forward, approve this rule-
18 making, and look to the future for adding around the edges
19 and being a little more comprehensive and more inclusive
20 of some of the other issues. But, again, this is the
21 bedrock, this is the foundation upon which all of that
22 will happen. So, thank you, Mr. Chairman.

23 CHAIRMAN PARNELL: Any questions?

24 (No response.)

25 CHAIRMAN PARNELL: Thank you, Steve.

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1 Okay. As a matter of procedure, I'm going
2 to announce two speakers at this point. The first will
3 take the podium, and then the second is on deck. So, to
4 kind of keep this thing moving a little quickly. Thank
5 you for the suggestion.

6 Next, I would ask Kevin Perry representing
7 REGFORM to come to the podium.

8 MR. PERRY: Good morning, Mr. Chairman,
9 good morning, Commissioners, special welcome to our new
10 Commissioner.

11 My name is Kevin Perry with REGFORM, the
12 Regulatory Environmental Group for Missouri, and we
13 represent folks from around the State who are required, by
14 regulation, to comply with environmental regulations, in
15 particular those that are important to the water
16 regulations.

17 CHAIRMAN PARNELL: I forgot part of my job.
18 Robert Brundage is on deck.

19 MR. PERRY: I'll just start my remarks by
20 Happy Veto Section Day. Insert your own Mark Twain joke
21 here. I'm so glad to be here. The main thrust of my
22 comments is this -- it's very much like Steve's -- and
23 that is, wow, we really hope that you adopt this rule.
24 This is important. We've got to have this.

25 And why would somebody stand up and ask for

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1 you to adopt a rule that multiplies the current regulative
2 stream miles by five? And the short answer is, if we
3 don't take our own state into our hands in the State of
4 Missouri, someone else will do it for us. United States
5 Environmental Protection Agency has the full authority to
6 promulgate water quality standards for the State of Missouri
7 if we don't do it. So, um, I'm asking you on behalf of
8 our members and on behalf of folks around Missouri to
9 please adopt this rule. Put this water quality standards
10 rule into place. I don't know how I can be more clear
11 about that. I really want you to adopt this rule.

12 So, I'm going to go on and make other comments.
13 Those other comments are not meant to diminish my first
14 comment which is, please, adopt the rule. My first other
15 comment has to do with variances. In paragraph 12, there
16 is a prescription laid out for doing variances, and that
17 prescription refers to a Federal regulation 40 CSR
18 131.10(G). And I will provide you with written comments,
19 but I want you to consider that that -- that this is an
20 unnecessary prescription on variances in the State of
21 Missouri.

22 You can stay right there in 40 CSR 131 and
23 go three paragraphs down to 131.13, and it describes a
24 bunch of freedoms that we should have in the State of
25 Missouri, and, so, we do not need to be this restrictive

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1 on the way we do our variances. So, my request to you is
2 pre-remove that paragraph B so that we can have a variance
3 process that's more flexible than currently proposed.

4 I also have a comment about sulfates and
5 chloride limits that are amendments proposed in your
6 regulation, and I'll get right to the point. That
7 amendment language, it's vague, it's confusing, and it
8 refers to the 20 -- 25th percentile of the 25th core tile,
9 and folks really don't know how to apply it. Does it
10 apply to hardness? Does it apply to the limits
11 themselves? One of the things that you can be sure of is
12 that it's a straight mathematical calculation. If it's
13 the 75th percentile or core tile, that means you know up
14 front that 75 percent of the time you're going to fail.
15 So, um, I might suggest to you that the last time this
16 Water Quality Standards rule came before you, um, it
17 wasn't adopted, but seven provisions were, and one of them
18 was on sulfates and chloride.

19 And that one that was adopted by you and
20 went to the US EPA in '7 (sic), and since that time,
21 although other provisions in rulemaking was adopted, this
22 one has not been adopted. And I think that this amendment
23 has been proposed to possibly solve some of that confusion
24 about not getting approved by US EPA, and I'm simply
25 asking you to remove this amendment. It's too vague.

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1 We're trying to shoot at a target that we don't really
2 know what it is. We haven't been rejected by the EPA yet,
3 so let's just remove it and we can -- if it is rejected by
4 EPA, we can come up with a better provision later when we
5 know why it was rejected.

6 In modified aquatic habitat, a definition
7 in there corrects, for example, rare and endangered
8 species, and I just want to invite you to remove that
9 parenthetical example. I don't think we should be
10 regulating by example. It's meant to, you know, more
11 fully understand the phrase unusual or unique assemblage,
12 and if we need a definition for unusual or unique
13 assemblage, let's write one up and put in the rule. Let's
14 not regulate by example, and I ask you to remove that, if
15 you will. So, those are my comments about the rule
16 itself.

17 I have two additional comments about how to
18 adopt the rule. As John said, this is a work in progress.
19 There are a lot of moving parts, and one of the moving
20 parts is the database. The rule sets forth a 1-to-100,000
21 resolution database of streams, and the rule also
22 describes in it -- the proposed amendment to this rule
23 describes in it using words, it says that these standards
24 will not be applied to some man-made structures for
25 conveyance and treatment. Yet, when you go and look

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1 inside that database as it exists, you can see some man-
2 made structures that were designed for treatment and
3 conveyance in there.

4 So, the comment that I'm making to you, the
5 request that I'm making to you today is -- as I told you,
6 I am going to write you a letter with details. I will
7 come back to you with some language -- but I want you to
8 consider, if you will, language that basically clarifies
9 that it's your intention that the words about conveyances
10 and man-made treatment structures trump what's in the
11 database. In other words, what's true is what you intend
12 to say by words. If those structures end up inside that
13 database, then I would like the Commission to acknowledge
14 that they're there by error and they don't belong there.
15 So -- and that's a request that will come from me as well.

16 The process has been paved with lots of
17 good intentions, and John just gave testimony and he said
18 that the Department intends to have a use attainability
19 analysis protocol ready for you on November 6th when you
20 vote, and I hope that's true. I'm also going to write you
21 a letter and provide you with language that you might
22 consider incorporating into this regulation that,
23 essentially, would allow you to adopt the regulation but
24 would not let the regulation become effective until the
25 use attainability analysis protocol is adopted by you, the

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1 Commission. And that language I'm going to offer to you
2 -- because I'm afraid on November 6th the UAA protocol
3 won't be done. So, um, I appreciate you considering that
4 request and looking for that language to come.

5 Lastly, I'll just repeat the remarks that I
6 made to you last month. The last time this rule came
7 before you, it was pulled. And there's no such thing in
8 State statute or State law as pulling a rule. It's been
9 proposed; the ball is in your court. So, it's not like
10 Lucy with the football in front of Charlie Brown. The
11 Staff can't yank it away from you. You have the ability
12 to vote it up and vote it down, and I think that when you
13 come here on November 6th that possibility that the rule
14 the Staff's recommendation to adopt this rule may happen
15 again, they may withdraw it again just like last time, and
16 I want to encourage you to please to adopt it anyway.
17 Even if it's pulled.

18 So, thank you for your attention, and I'm
19 happy to answer any questions.

20 CHAIRMAN PARNELL: Any questions for Kevin?

21 (No response.)

22 CHAIRMAN PARNELL: Thank you, Kevin.

23 MR. PERRY: Thank you.

24 CHAIRMAN PARNELL: Robert Brundage with
25 Newman, Comley, Ruth; and, on deck, Peter Goode with

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1 Washington University Police Environment.

2 MR. BRUNDAGE: Good morning, Mr. Chairman,
3 and Commission. I'm Robert Brundage, and I'm very glad to
4 be here this morning.

5 I want to echo two things that Kevin said.
6 The last thing he was talking about was that you have the
7 authority to promulgate this rule come December, and if
8 the Department Staff comes before you like they did last
9 March or November, whenever it was -- November, I believe
10 -- and they say we're pulling the rule, they can't pull
11 the rule. Last November, you guys took their
12 recommendation to pull the rule and did not vote on it.
13 So, when December comes, you guys have a hundred percent
14 authority whether you vote the rule up or vote it down.
15 Despite whatever recommendation comes from me, the
16 Department, anybody else, it's your authority.

17 The other thing I want to echo that Kevin
18 said is that you do need to vote this rule in in some
19 fashion. This is very important. We need to get this
20 step done; we need to incorporate some of these changes.
21 As you'll hear testimony from me and Kevin and others
22 today, there are still some things in play that need to be
23 worked out between now and when you vote in November. Let
24 me talk about a few of those.

25 One of them is the UAA protocol. I am a

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1 member of the group that is working on that protocol.
2 There have been two meetings. Progress has been slow. If
3 you recall, I see the purpose of this protocol is to
4 determine when beneficial uses should be moved from any of
5 these water bodies that have been added in. So, this is a
6 very important step in how this is written. At this point
7 in time, the UAA protocol is incomplete, but I would like
8 to encourage the Department to keep working on it as hard
9 as possible, and I stand ready to work with them to try
10 and move this protocol forward.

11 One of the factors that is very important
12 to incorporate into this protocol is Factor 2, um, of the
13 six UAA factors, and, um, I think the Department has
14 pledged to be working on that. So, even though I would
15 like them to work on all six factors, definitely try to
16 work on factor 2, um, and come November, come December, we
17 will determine whether or not the UAA protocol -- or you
18 will determine whether or not the protocol is sufficient
19 that you would like to incorporate into this rule or
20 whether you would choose to defer. And I will be
21 monitoring that situation and would offer any other
22 recommendations in the future concerning the protocol.

23 So, today, I appreciate the work, but
24 there's a lot of work that needs to be done on the
25 protocol. One of the very good things about this rule is

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1 we now have or are proposing some tiered aquatic uses from
2 great rivers, large waters with different tiers of the
3 systems. That is good, and that is critical to have in
4 this rule. One thing that I question is the new category
5 of exceptional aquatic habitat. That is defined in the
6 rule here, but how it is used is totally unclear at this
7 point in time. What type of additional protections would
8 exceptional aquatic habitat receive? We have our water
9 quality standards. Are we going to adopt more water
10 quality stands that are more stringent? The standards we
11 have are supposed to protect the beneficial uses. So, why
12 this category is in here is really unclear to me. And it
13 probably should be removed.

14 I would like to remind the Commission that
15 several years ago we adopted an anti-degradation review
16 process that looks at three different tiers of waters, and
17 one of those tiers of waters is out in outstanding waters.
18 The Department already has an obligation to carefully
19 scrutinize any applications for new sources or additional
20 loadings on our outstanding waters. And, so, that is the
21 protection for anything that may be an exceptional aquatic
22 habitat. So, that is already protected in our law; and,
23 with this definition here, when you add a definition, it
24 implies that you want to do something or implies the
25 regulations.

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1 There is no description of what we do with
2 this. So, at this point in time, I think we should remove
3 it. These waters are already highly protected in
4 Missouri, and if there is any future -- future discussions
5 on how this would be implemented in the rule, I'd be happy
6 to hear it, and maybe it will make sense at that point in
7 time. But, at this point in time, it's unclear and
8 doesn't make any sense.

9 The next thing I want to talk about is the
10 use designation data set. We have designated uses in our
11 rule on Page 941. We're applying the rebuttable
12 assumptions to perennial river and streams, streams with
13 permanent pools; and, third, all rivers and streams
14 including the 1:100,000 scale national hydrograph data
15 set. I fully support this part of the rule here. Where
16 the Department has worked extremely hard over the last
17 number of months is to try to refine and fill in any gaps
18 in this data set. And there are gaps in the data set.
19 And, as recently as last week, the Department gave a very
20 good presentation on all of the good work that they've
21 done on defining this tool to try to clarify where the
22 1:100,000 waters are in the state.

23 So, some very good work has happened, but
24 the data set is still incomplete today. Come December, it
25 will still be unclear whether the data set will be fully

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1 refined and finished. I would encourage the Department
2 continue to work on it, but I would like the Commission to
3 have an open mind on whether or not it is a good idea to
4 incorporate this into the rule. I have suggested that the
5 Department should create this data set, and it's extremely
6 valuable. It's not work wasted. The permanent staff used
7 to have this data set, the TMBL, the Water Quality
8 Monitoring Assessment would have to have this data set.

9 But, if you lock the data set, in a perfect
10 data set in the rule, where are we in the next three
11 years? What happens on any changes? The rule talks about
12 the data set changes can be made to the data set by
13 reading from the rule approved by the Commission, US EPA
14 during the next systematic review and subsequent tri-
15 annual review. So, does that mean we wait for three
16 years? What has to do with rulemaking? Is it not a
17 rulemaking process? It's not exactly clear.

18 So, I think in the coming next two months,
19 we'll learn more about the data set and whether or not
20 you, as Commissioners, think it's complete enough to
21 incorporate into the rule or whether there are benefits to
22 not incorporate by rule but have a very useful data set to
23 help implement the rule.

24 Another comment I have is regarding
25 segmentation. Maybe I should have talked about this the

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1 same time I talked about the UAA protocol; but, if you are
2 going to go out and do a UAA protocol on streams, you've
3 got to choose some beginning and end point. And, now that
4 we are adding 25,000 miles or whatever of streams to the
5 State and not going to be Table G or Table H necessarily,
6 where does that segment begin or where does that segment
7 end.

8 Segmentation is really kind of discouraged
9 in this rule, and I think the Department and EPA should be
10 open to segmentation. If you want to go out and do a
11 study on a stream, people -- whether it's the State,
12 private industry, or anybody -- you only have so many
13 resources. And you might say, I can only afford to study
14 five miles of stream because that's the only segment that,
15 really, my discharge would impact. I can't do a 20-mile
16 segment. I can't afford it. So, affordability and
17 whether it makes sense to segment something really needs
18 to come into place in this concept of not cutting streams
19 up in different segments. It needs to be considered or
20 maybe removed from the rule.

21 One other thing about the water bodies that
22 may be not included in the 1:100,000, do we add beneficial
23 uses to those water bodies. And the rule talks about in
24 designated uses could be added and they could be added on
25 a site-specific case-by-case basis where hydrologic and

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1 biologic data are sufficient for assigning designated
2 uses. What does sufficient mean? If you read this
3 section, it doesn't really send you to Paragraph 2G where
4 you talk to the UAA protocol. And I was under the
5 understanding and through previous testimony during water
6 protection for, um, meetings that we were going to refer
7 to Paragraph 2G for this.

8 So, I don't know if this was intentional or
9 maybe an oversight, but when hydrologic and biologic data
10 are sufficient, there is no definition of sufficient in
11 here or where to go to determine -- a process to determine
12 what is sufficient. So, I think that that's something
13 that needs to be cleared up.

14 Finally, I want to touch on something that
15 Kevin commented on, and I want to hit it with a little bit
16 more detail. A sulfate and chloride fully criteria. I
17 would have shown you a Power Point presentation, but the
18 room wasn't set up for that. So, I'll hand you
19 (indicating).

20 As Kevin mentioned last November, you voted
21 in changes to the sulfate and chloride criteria. And the
22 reason the Commission adopted those changes is because
23 there was a body of scientific work that indicated the
24 current criteria were no longer scientifically defensible
25 and they were over-protective of the beneficial uses.

1 Pardon me. Since that time, they've been
2 sent to EPA, and EPA has taken no action. So, we're
3 waiting on action by EPA. When Missouri adopted these
4 changes to the sulfate and chloride criteria, we adopted
5 almost verbatim -- and that's, maybe, the problem -- the
6 same criteria that the State of Iowa adopted. We kind of
7 copied theirs. We copied theirs because EPA worked with
8 Iowa and EPA approved Iowa's chloride and sulfate
9 standards.

10 One of the things that EPA pointed out
11 after Missouri adopted our standards last year is that --
12 and if you go to page 2 of your handout, top slide on page
13 2, it says Iowa Current Chloride Standard. I have some
14 sims (ph) in there in reading each sentence. This is a
15 sentence that did not get carried over into Missouri's
16 rule. And this is important because, in Missouri, we have
17 a mathematical equation to calculate what the sulfate
18 criteria -- I'm sorry -- sulfate chloride criteria should
19 be, and depends upon what the sulfate is in the water and
20 what the level of hardness is in the water. So, there are
21 two factors in the equation.

22 Well, to help simplify things, Iowa put in
23 default factors for that equation. They put in a default
24 hardness level of 200 and a default sulfate concentration
25 of 63 milligrams per liter. EPA pointed out that that was

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1 not included in Missouri's rule. So, the Department is
2 trying to correct that.

3 On the bottom part of the slide is
4 Missouri's current criteria; and noticeably absent are
5 those default numbers for hardness and sulfate. If you
6 turn to page 3. So, what are the options? I suggested
7 that Missouri adopt some default criteria. Um, or DNR
8 could say, Hey, we're going to put in our current writer
9 (ph) materials, your our default criteria, a couple
10 options there. What Missouri did, they chose not to go
11 that route. If you go to page 4 of your handout, look at
12 the bottom slide. This is the language in the current
13 rule. It says values for sulfate and chloride should be
14 based upon the upper core tile values for the water body
15 in question. So, therefore, somebody's going to have to
16 go out and try to figure out what those core tile values
17 are. They're not going to be able to go to default values
18 right there in our water quality standards. For whatever
19 reason, the Department did not choose to put in some
20 default values, and I think that's a mistake.

21 Another potential mistake, if you calculate
22 metals limits, DNR looks at the lower -- not the upper --
23 the lower core tile for hardness. And, so, I asked the
24 Department, I said, Why didn't you choose the lower core
25 tile for hardness, and there is more stringent to do that,

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1 and the Department said, You know what? We made a
2 mistake. Thank you for telling me that. We'll make that
3 change. So, I presume the Department may come back to you
4 with a final recommendation to change the language to say
5 values for sulfate shall be the upper core tile and value
6 for hardness will be the lower core tile. If you put
7 those into the mathematical equation, that makes the
8 chloride criteria even more stringent, so that's overly
9 overly conservative and it's not based upon what the real
10 water quality is.

11 Turn to page 5. If you look at this little
12 graph at the top of the page, it graphs hardness in
13 sulfate, and you can see there is some correlation when
14 hardness is low, sulfate is low. So, Missouri's going to
15 say, using your equation, a little hardness on high
16 sulfate coordinate both should be low. Right there,
17 that's not scientific defensible.

18 Flip to the next page on page 6. This
19 helps demonstrate this at the graph at the top of the
20 page. Hardness is on the bottom; sulfates is on the left.
21 The red line that's vertical there is the 25, the lower 25
22 core tile, or 25th percentile of that data set for
23 hardness, and the green line is the upper 75 for sulfate.
24 But, if you look at the average, you see a black line, and
25 the difference between whether the red line crosses the

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1 black line and the green line, that is how much overly
2 conservative Missouri's equation is. We should be down
3 where the black line intersects the red line, and I -- and
4 I know this may be confusing.

5 I will put this in writing. The Department
6 hasn't seen this, but this graph right here (indicating)
7 is a -- is some data, real data from Missouri, of graphing
8 hard water and sulfates. It basically proves the points
9 that Missouri's equation is not scientifically defensible.
10 So, what do we do about that? Again, flip the page to the
11 very last line, and this is what I suggest.

12 If we could borrow, um, two of three
13 milligrams default value for sulfate and use 162 for
14 hardness, which is what DNR uses as a default anyway in
15 the permanent Writers Manual for Metals, there's two
16 default values we can put in our rule right now. And the
17 two red numbers that you see, 372 and 602, those are
18 calculated based on these default values.

19 So, this would fix our problem. It's very
20 clear, very transparent, and it doesn't rely on upper or
21 lower core tile values, and it's easy to use. So, if the
22 Commission would make those changes, something could get
23 back to EPA and, hopefully, EPA would be in a position to
24 approve our sulfate chloride criteria. That concludes my
25 comments today.

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1 CHAIRMAN PARNELL: Anybody have any
2 questions?

3 COMMISSIONER BENNETT: I do, Robert. I
4 hate to say this, but you've tried to educate me beyond my
5 intelligence. And, to me, it's muddying the water for me
6 to try to see where you may be headed with this. You say
7 we should adopt the rule, but then you're proposing I
8 don't know how many changes, variances, whatever.

9 Are you saying those have to be done before
10 this is adopted or are you willing to wait until after
11 it's adopted to go back to the table and try to clean up
12 the things that we all know are still out there?

13 MR. BRUNDAGE: Well, I look at it in
14 reverse. That you should adopt the rule, that there's
15 some question on a few of these things. If you back out a
16 few things, um, the use data set or the UAA protocol, or
17 anything like that, the heart and soul of this rule is
18 intact. That's the important thing. All of those strings
19 will be added in. So, if there's things to clean up
20 later, add it back in when it's perfect. Otherwise,
21 you're going to send it to EPA, they may like it, they
22 approve it; well, then, are you going to undo the rule?
23 It gets messy at that point in time.

24 COMMISSIONER BENNETT: I guess I'm still
25 not clear. Are you saying these changes have to be made

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1 prior to the Commission approving the rule?

2 MR. BRUNDAGE: Like Kevin Perry said, the
3 UAA protocol that's cited in -- the rule says -- it cites
4 a UAA protocol developed as of November 6, 2013. That's
5 this fall. So, we're citing something in the future
6 that's not even done yet. So, it's hard for me to provide
7 testimony to you to say, This is a great idea, adopt it.
8 There's still some things we need to look at through the
9 months and things that have to be developed, and that's
10 just the way it is. It puts people like me in an
11 extremely difficult position to say adopt that language
12 verbatim.

13 But, I'm telling you, I support the rule as
14 a whole that includes the 1-to-100,000 data set, 20, 25
15 thousand miles of stream. I'm in support of that. That
16 is the heart and soul of this rule and will take us a long
17 long way to satisfying EPA concerns.

18 CHAIRMAN PARNELL: There is confusion
19 because I believe you began your comments with saying you
20 support the adoption of the Water Quality Standard of
21 November 6th. Are you disclaiming that statement?

22 MR. BRUNDAGE: I guess I said -- I should
23 have said whenever you're going to meet to vote on this
24 rule. .

25 CHAIRMAN PARNELL: We're meeting November

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1 6th to vote on it.

2 MR. BRUNDAGE: Okay. All right. So, we're
3 confusing two things. November 6th, I want you to vote in
4 the rule in some capacity.

5 CHAIRMAN PARNELL: Thank you. Anybody
6 else?

7 (No response.)

8 CHAIRMAN PARNELL: Thank you, Robert.

9 Peter Goode with Washington Missouri
10 University (sic). Steve Meyer with the City of
11 Springfield is on deck.

12 MR. GOODE: Good morning, Commissioners.
13 My name is Peter Goode, an environmental engineer with the
14 clinic. The Clinic represents Missouri Coalition
15 Environment on matters related to 20.7.031 before you
16 today. The Coalition has several concerns with the
17 proposed amendment. I am going to touch on these briefly
18 and will also be submitting detailed written comments so
19 far.

20 Our concerns include the lack of default
21 fishable uses for water that exists beyond the proposed
22 enhanced 100K data set that's proposed in the rule, the
23 lack of any numeric criteria for any wetlands, and the
24 Coalition also has some concerns with several terms
25 defined in the rule. As we have noted probably repeatedly

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1 in previous testimony, the proposed amendment does not
2 provide protections required under the Clean Water Act and
3 Missouri Clean Water Law.

4 We have participated in and supported the
5 effort that went into utilizing this enhanced 100K data
6 set that the DNR proposes in the rule. However, we
7 believe that the default protections that are provided to
8 this enhanced 100K data set do not go far enough. The
9 default protection should be extended beyond that data set
10 to all waters of the U.S. within the borders of Missouri.
11 We believe that this could be done with minimal changes to
12 the regulation and would make the regulation totally
13 compliant with Federal -- State and Federal law. And I'm
14 going to talk a little bit about the UAA protocol and why
15 that's important and with respect to the comment that I
16 just made.

17 The UAA protocol that the Department is
18 working on right now as mentioned in previous testimony is
19 for removing or downgrading designated uses once UAA
20 protocol has been conducted. However, the protocol also
21 includes to adding streams to the data sets for
22 protections. And, this is -- if this is the Department's
23 intent, it's contrary to what's required under the Federal
24 Clean Water Act. Default uses, fishable removal issues
25 are to be presumed. They're not proven. So, if a

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1 landowner or a citizen in Missouri has a water body on
2 their property that is not included within the 100K data
3 sets and they believe it warrants protection because they
4 use it for swimming or recreational uses or because
5 aquatic life exists there, there is no pathway right now
6 for that water body to be added to the use -- the
7 designated use AKK (sic) has set for its received
8 protections. So, what seems to be going on right now is
9 that the Department is going to require some amount of
10 data to be submitted in order for that water body to
11 receive protections.

12 And just to give an example of how this is
13 problematic, in -- several years ago, the Coalition
14 submitted aquatic life data on streams to the Department
15 and asked that those streams be included and protected
16 with default uses. The data was submitted, the request
17 was made, and nothing ever became of that. There was no
18 protocol that said how you go about adding those waters to
19 the regulations to be protected. And thus, in essence,
20 despite spending thousands of dollars and many manhours
21 collecting this information, the request was, essentially,
22 rejected.

23 That's why it's important that default uses
24 be extended beyond this 100K data set. So, we're going to
25 request in our written comments as well that the waters of

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1 the U.S. beyond our TK be submitted, included with default
2 protections.

3 The second concern we have that I want to
4 highlight is that, while there are now some specific
5 designated uses for wetlands, there is no numeric criteria
6 included to go along with those designated uses; and,
7 thus, there is no numeric criteria to protect wetlands.
8 Wetlands are considered waters of the U.S., at least
9 waters that are determined to be jurisdictional and, thus,
10 guaranteed protections under the Clean Water Act.

11 Other states in the midwest, including
12 Kansas and Nebraska, have numeric for wetlands. Given the
13 significant social and environmental values of wetlands,
14 we would request that the Department and the Clean Water
15 Commission apply the warm water aquatic habitat use to
16 wetlands located on public lands. This would be a good
17 first step. The Department has a subcommittee that's
18 already working on establishing protections for wetlands,
19 but this basic first step would be a good path for -- and
20 then subcommittee could continue on working on how to
21 apply designated uses to wetlands beyond just those on
22 public lands.

23 Finally, the Coalition is concerned that
24 there are a few terms that are defined in the proposed
25 rule, but they are never utilized and their ultimate

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1 impact is not known. For example, the term modified
2 aquatic habitat, exceptional aquatic habitat, and Class E
3 are all defined in the rule, but, ultimately, never used
4 and never said how they would be used or what are the
5 results of the application of those definitions. The
6 Department should explicitly identify how these terms will
7 be used in order to clarify their intent.

8 Just for example, there's the term modified
9 aquatic habitat appears in the rule but doesn't say
10 exactly how this would be applied and what it means when
11 it is applied. Means site specific when it applies, less
12 stringent criteria, no criteria, exactly what? And it
13 possibly may be clarified more under the development of
14 the UAA protocol for aquatic life, but within the rule
15 itself, it needs to be defined as these are actually going
16 to be used other than just defined.

17 We appreciate the consideration of these
18 comments, and we appreciate the opportunity to testify.

19 CHAIRMAN PARNELL: Questions of Peter?

20 COMMISSIONER BENNETT: One, quickly. I
21 will make it quick. These comments that you're making
22 such as the definitions and what not, have they been
23 communicated to DNR Staff in the stakeholder meetings or
24 by letter or anything?

25 MR. GOODE: I think we've generally talked

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1 about those definitions but we haven't directly said
2 exactly what we would like those to say. But, like I
3 said, we do participate on those work groups, so that will
4 be clearly brought up during that time. We will submit
5 comments that will suggest some of those.

6 CHAIRMAN PARNELL: Anybody else?

7 (No response.)

8 CHAIRMAN PARNELL: Thank you, Peter.

9 Steve Meyers (sic) from Springfield. Trent
10 Stober's on deck.

11 MR. MEYER: Good morning. My name is Steve
12 Meyer. I'm representing the Association of Missouri Clean
13 Water Agencies. We have -- we serve 2.75 million
14 residents of Missouri which is about 45 percent of the
15 population. Our membership includes St. Louis MSD,
16 Springfield, Independence, Jefferson City, Kansas City,
17 St. Joseph, Little Blue Valley Sewer District, Duckett
18 Creek, Columbia, Branson, Cape Giardeau, St. Peters, St.
19 Charles County, and Sedalia. We have six consultant
20 members; Olsson Associates, Black and Veach, Burns and
21 MacDonald, HDR, Jacobs Engineering, and Geosyntec. I'll
22 be very brief. I have two comments.

23 First one is I urge you to adopt the Clean
24 Water Standards as is. I think they are good standards.
25 I think they should be adopted. That has been said

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1 before, so I'll go on.

2 Next, to the proposed 100K data set. Right
3 now, the data set seems to be somewhat of a moving target.
4 I would suggest that that data set be time-stamped at some
5 point and that pass that the data set any additions,
6 modifications, or removals be done through the UAA
7 protocol.

8 Second part of that is the rule exempts
9 man-made conveyances of storm water and wastewater. We,
10 in Springfield, have presumptive evidence that 48 of those
11 segments are man-made conveyances of storm water or
12 wastewater. I would suggest that we set those segments
13 aside for now and take up at the next triennial review,
14 and we will provide that evidence to the Department in the
15 meantime of those 48 segments.

16 And, finally, in the absence of UAA
17 protocol, I would suggest that we adopt the six grounds
18 and 40 CSR 131.10(g) for adding removal or modifying use
19 in the Federal regulations.

20 That's my comments. Any questions. Before
21 I quit, I do have some evidence of what those segments
22 are.

23 (Whereupon, Mr. Meyer handed documents to
24 the Commission.)

25 MR. MEYER: And I can provide further

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1 evidence of the rest of the segments.

2 CHAIRMAN PARNELL: Any questions of Steve,
3 please?

4 (No response.)

5 CHAIRMAN PARNELL: If not, thank you,
6 Steve.

7 MR. STOBER: My name is Trent Stober. I'm
8 with HDR Engineering here today representing the
9 Metropolitan St. Louis Sewer District, City of
10 Springfield, and City of St. Joseph, Missouri. I know a
11 lot of the speakers have hit on several issues that I will
12 be addressing and public -- and written public comment, so
13 I'll just keep this brief and to one specific issue.

14 In particular, very positive change over
15 the various versions of regulations that we've looked at,
16 you know, the last 10 years, and that's the term that John
17 Hoke mentioned in terms of the tiered aquatic life use
18 framework that's being proposed in this regulation.
19 One piece of that tiered use -- and I would agree with
20 Peter that there probably could be some clarifications
21 that we have within that framework on how criteria,
22 specifically water quality criteria, applied to those uses
23 -- but one piece recognizes the difference in stream size
24 in order and how that changes the biological expectation
25 we would have within these aquatic communities.

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1 This recognizes that there's differences
2 from headwater streams all the way to the great rivers
3 that we have out in front of this building today. It sets
4 potential difference of biological expectations of the
5 aquatic life uses that we would have. I think there is
6 additional refinement that could be made, particularly
7 with regard to ephemeral waters. These are waters that
8 maintain either tech flow or pools just solely related to
9 storm water.

10 And that's probably another piece of water
11 that was actually included in the RIR which was moved to a
12 Class E designation in the rule. But that should be
13 something that should come forward within this rule and be
14 separated from the modified aquatic life or habitat
15 expectations.

16 So, with that, those are my only comments;
17 again, positive. I think this is a great piece of this
18 regulation. It's taken us a long time to sort of get
19 there, but I think sometimes there's, you know, some good
20 that comes out of a thoughtful approach to regulation
21 development.

22 CHAIRMAN PARNELL: Any questions of Trent?

23 (No response.)

24 CHAIRMAN PARNELL: Thank you, Trent.

25 MR. STOBBER: Thank you.

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1 CHAIRMAN PARNELL: Ed Galbraith, Barr
2 Engineering; Phil Walsack on deck.

3 MR. GALBRAITH: Good morning,
4 Commissioners. I'd like to extend my congratulations to
5 Dennis on his hard-earned victory.

6 MR. WOOD: I campaigned all day.

7 MR. GALBRAITH: I know. It's exhausting.

8 My name is Ed Galbraith with Barr
9 Engineering. I'm the aforementioned person who did not
10 get this rule done, but I am very happy to see it get this
11 close to the goal line and hope we can push it over. I do
12 want to address one comment made by Peter Goode that his
13 impression of this rule does not fulfill or satisfy the
14 requirements of the Clean Water Act.

15 I think we have EPA's public statement on
16 several occasions that this framework in the 100K with the
17 ability to add waters and remove waters is an acceptable
18 -- an acceptable framework, provided that those waters
19 above the 100K can easily be brought in.

20 That kind of leads to the reflection on the
21 big picture that, you know, the people I tend to
22 represent, they are concerned that the 100K goes too far.
23 Okay. That, as a result of adopting the 100K permit,
24 these will be spending resources to protect things that
25 don't exist. That's a legitimate concern in some cases.

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1 Others who Peter represents, the 100K, don't feel it goes
2 far enough, and that's true in some sense as well. To
3 that point, nobody in this room thinks this is a perfect
4 rule, and we all have some concerns with it. But it does
5 represent a compromised position, and I think it's a good
6 rule and I support it going forward.

7 I share some of the previous concerns about
8 the protocol getting done in time. I would support a
9 provision that there is a trigger mechanism to kind of
10 hook the implementation to the completion and approval by
11 this Commission of a UAA protocol for aquatic life. Steve
12 Mahfood mentioned predictability and transparency which
13 this law definitely gives and that's a good thing, but
14 implementability and streamlined process both for adding
15 and removing water, so we've got both sides of the aisle
16 represented here. That protocol is going to do good for
17 both interests here. So, we need to get that done.

18 As to program adding division and all
19 resources they can towards getting this done so we don't
20 have to discuss this in November except for presenting it
21 to you to adopt. Those are my comments, and I'll be happy
22 to answer any questions.

23 CHAIRMAN PARNELL: Questions of Ed?

24 (No response.)

25 CHAIRMAN PARNELL: Thank you.

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1 MR. GALBRAITH: Thank you.

2 CHAIRMAN PARNELL: Thank you, Ed.

3 Phil Walsack with Missouri Public Utility
4 Alliance; and, on deck, Joseph P. -- apologize for the
5 pronunciation -- Bockett (sic), private citizen, you're on
6 deck.

7 MR. WALSACK: Good morning, Commissioners.
8 My name is Phil Walsack. I represent 110 municipal
9 governments here in Missouri. I have heard the previous
10 comments. I will make this relatively short.

11 I'm a paid lobbyist, but I've been
12 upgraded. My job now is a stakeholder. For the last five
13 years, I have been working on this rule. One employee
14 before me has been working on this rule. Commissioner
15 Warren, you were a stakeholder back in those days, and you
16 weren't on the Commission. Most of your faces on this
17 Commission weren't there when I started. And John Hoke
18 and John Madras has been working on this a lot longer. I
19 would like to thank the Department for this hard work on
20 this rule.

21 One of the things I wanted to do for you
22 was to get you the cost of the rule. I think the
23 Department has made valiant efforts making that number
24 come to fruition. We had started with a very low number
25 and now we have a lot bigger number, and it's a more

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1 robust analysis. That is really important in your
2 decision making.

3 Second, the use attainability analysis is
4 important. My colleagues have stressed that prior. I'm
5 going to give you a football analogy because I can.

6 We've carried the ball all season and now
7 it's time for the Bigs -- that's what we call the
8 senior-most management position at DNR -- to step forward
9 to negotiate this last deal. I need a closer. I need
10 somebody who is going to come in and work this thing, and
11 that means people like me and Madras and Hoke. We can
12 probably step aside for the young ladies who have
13 hyphenated names to come forward at the very end of this
14 thing and finish it.

15 This UAA protocol needs to be firmed and it
16 needs to be finished by November because, if it's not
17 finished by November, I don't want to come back to you and
18 play Jenga and pull out sticks that's very important in
19 the whole rule that holds this together. The use
20 attainability analysis is important. We need to finish
21 what we started six, seven, eight, ten years and all these
22 Commissioners and all these Staffs later. We need to
23 finish strong, and we're not doing that right now. I want
24 the Department to show up like it's the drought. I want
25 that sort of political and professional motivation right

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1 now. Six weeks is all we have left, and it's time to
2 bring the Bigs and finish this thing out.

3 Any questions.

4 CHAIRMAN PARNELL: Where did you come up
5 with six weeks?

6 MR. WALSACK: Because, by the time it gets
7 that close, we can't be doing this at the ninth hour. We
8 have done the legislative processes where we do things in
9 the last 10 days, and that's not enough time. We need to
10 finish this before the last 10 days so we can all breathe
11 and look at it. That's what we need to do.

12 CHAIRMAN PARNELL: November 6th is the date
13 we're looking at.

14 MR. WALSACK: Yes, sir, it is, and I want
15 this finished on November 5th.

16 MR. BENNETT: Can you tell us how you
17 really feel about this?

18 MR. WALSACK: Thank you, Commissioner.

19 CHAIRMAN PARNELL: Any questions of Phil?

20 (No response.)

21 CHAIRMAN PARNELL: Thank you.

22 MR. WALSACK: Thank you.

23 CHAIRMAN PARNELL: Joseph -- tell me how to
24 pronounce your name.

25 MR. BACHANT: Bachant.

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1 CHAIRMAN PARNELL: On deck is Eric Karch
2 representing the River des Peres Watershed Coalition.

3 MR. BACHANT: Good morning, ladies and
4 gentleman. My name is Joseph B-as in boy-a-c-h-a-n-t.
5 I'm French-Canadian, if you will. My ancestors came over
6 with Champlain. So, I've been around here for a while.
7 As has some of my Native American ancestors been around
8 here for a long while.

9 But I'm close to an oxygen area. I will
10 put emphasis beyond what the previous group has said.
11 When I first started going to college, I can remember
12 rolling across the Hudson River on a ferry to visit the
13 library, seeing untreated human waste and garbage, the
14 odor of which was unbearable. Fast forward to when I
15 finally became a professional and I was working as an
16 ecologist -- or research ecologist in the State of Ohio, I
17 witnessed a river on fire.

18 I also directed about that time that the
19 Governor to look into the matter of the Federal findings
20 of mercury in the commercial fishes of Lake Erie. I
21 equipped myself and I took that into consideration, and
22 one of the questions I asked of myself as a researcher is
23 where is this material coming from and how is it getting
24 into the lake? I'll get to the point.

25 Among the many sources that I find where

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1 mercury was getting into the waters of the United States
2 was coming out of the drain pipe in farm fields, in the
3 headwaters of the various rivers and streams and
4 tributaries and dry creeks going into the lake. Now, I
5 have provided to Malinda a handout which I would like for
6 you folks to see at your leisure, because I'll be talking
7 about headwaters.

8 But, believe me, we found in the sediments
9 that were coming through these pipes mercury that was
10 traveling into the lake with each storm event, eventually
11 accumulating in the lake, getting into the bayou, the food
12 chain, and winding up in walleye and perch. This was --
13 and it was a wake-up call for me because I had gone this
14 -- oh, how old was I at that time, 25, 30 years old --
15 from seeing rivers on fire, seeing untreated human waste
16 to realizing that here up in this dry stream bed is where
17 this material is coming from.

18 Ladies and gentlemen, I'm going to go back
19 to elementary school, if you will. Water is a continual.
20 Water gets into the atmosphere, it falls on the land,
21 water is a universal solvent. It will pick up whatever it
22 hits on the land, and it gets into the water system at the
23 nearest conveyance. I don't care if it's a man-made
24 ditch, I don't care if it's a pipe draining an old lake
25 bed field in the old lake bed of Lake Erie in Ohio, I

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1 don't care if it's up in the headwaters of the shutterway
2 up in Iowa. It's going to hit the Missouri River, the
3 Mississippi. It's going to hit municipal water supplies.
4 We have got to look at water as a continual.

5 Now, I joined the Department of
6 Conservation in 1972. There was an effort at that time by
7 the Department to begin to addressing the new
8 environmental laws that were coming out. So, I came from
9 Ohio into Missouri, and I basically took off my
10 researcher's robes and I started taking on on the robes as
11 an ethicist (ph) for the people, because one of the first
12 things joined in my ethic commission we behave according
13 to the public trust.

14 You are representing the people of this
15 state. And I would dare say that you people, under
16 whatever oath you take, have the same onus on you. Too
17 often we look at water as a commodity. Take a look at the
18 Constitution of the State of Missouri. Take a look at the
19 Clean Water Act. It doesn't give any proprietary price to
20 any one particular people. It belongs to the people. It
21 is a common resource. It ought to be treated as such.

22 So, while I support this establishing
23 forward, as John very well knows, I have been an
24 curmudgeon in the past on the case of John and his
25 predecessors. In fact, since I joined the Department in

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1 1972, I have witnessed the creation of the Department of
2 Natural Resources in 1974 -- July 1, I believe it was --
3 and I have worked with every Staff and Director since
4 then.

5 And Steve Mahfood has pointed out in his
6 comments -- if he still is here -- he gave me a wake-up
7 call beyond that. He says Missourians are just too
8 cavalier about their water, and he was right. Because,
9 the more I got into dealing with water resources during my
10 30-some-odd years with the Department of Conservation --
11 I've been retired 11 years now -- the more I began to
12 realize that we don't know just exactly how precious this
13 water is in this state.

14 Okay. I am 11 years retired. I'm a
15 grandfather and now a great-grandfather. I am not here
16 speaking for the State of Missouri, I'm not talking for
17 the citizens, I'm talking as somebody who is worried about
18 the future of my children, my children's children, and
19 their children. The way I see things now, particularly
20 since my retirement, have taken a profound interest in
21 this thing called climate modification change, or whatever
22 you will. I have been following the papers, not the
23 media; somebody just said we are now five minutes to
24 midnight in terms of what we can see coming.

25 My ecological training tells me that the

1 first resource that we are going to see impacted by these
2 changes during this century that my great-grandchildren
3 will have to suffer under is going to be water. In order
4 to meet the future as law directs the Commission to do, we
5 are going to have to go beyond this proposal, which is a
6 fine step forward but I have been castigating for 40
7 years, Staff, previous Commissions, Directors, we have got
8 to be -- get beyond the reach mentality. We started at
9 the big rivers, now we're inching our way upstream. In
10 the meantime, yesterday, it was rivers on fire.

11 Yesterday, it was pharmaceuticals which, by
12 the way, I now know are causing fishes in the Missouri
13 River to become homosexuals. Is that in your rules and
14 regulations? Tomorrow it's going to be something all
15 together different. We keep looking backwards. I know
16 how we got in this position. We've gotten into the realm
17 of being lawyers. We have to parse this and parse that.
18 I've heard the same thing, again, together that I have
19 heard ad nauseum over the years of my years as a
20 professional concerned about this resource.

21 So, I am here today pleading for my
22 children and their children that we pick ourselves up by
23 the bootstraps, pass this so-called regulation, but let's
24 get on with it. I think it is within your purview to
25 challenge the Staff to look beyond where we are and start

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1 coming back with some recommendations holistic, if you
2 will. You have got people specializing in watersheds.
3 You have specialists in all kinds of areas. For heaven's
4 sakes, you have brain trusts. They're the people you need
5 to start coming up with some ideas.

6 In fact -- one last comment, if I may. I
7 don't want to overstep my five minutes. One of my pride
8 and joys, perhaps the capstone of my career was being one
9 of the founders of Missouri's Stream Team. I remember an
10 awful lot of people back then saying, Oh, we can't get
11 citizens involvement. Oh, we're going to have problems
12 here. These people are dumber than what you thought.
13 They're not going to understand.

14 Well, trust me. These are folks like you
15 that have a lot of grey matter between their ears. They
16 are sharp, and I don't know, John, how many now you had
17 that are certified QA/QC for helping with adding data to
18 the data center. It was David Shore who came to me about
19 the time that the Stream Team Program was really starting
20 to cook. He was the Director at that time. Says, I need
21 help. EPA had just mandated the State to get up and going
22 with biological data. He didn't have the staff. You're
23 never going to have enough staff. You're never going to
24 have enough money to do what we have to do.

25 But there are a lot of citizens out there

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1 willing and able to help the Department work on their
2 resource. All they need is direction, training, and, in
3 some cases, equipment. But, for every effort you put in
4 to that sort of approach to these problems of flowing, I
5 will vouch that you will get tenfold back, and then some.

6 Thank you for your attention. Thank you
7 very much for your service.

8 CHAIRMAN PARNELL: Any questions for Mr.
9 Bachant?

10 (No response.)

11 CHAIRMAN PARNELL: Thank you for the
12 pronunciation. I'm getting closer. Thank you.

13 MR. BACHANT: Thank you.

14 CHAIRMAN PARNELL: Eric Karch. Holly
15 Neill, you're on deck with Missouri Stream Team Water
16 Coalition.

17 MR. KARCH: Hi. Thank you for having me.
18 I want to thank again for putting together a rule that's
19 been a long time coming. My name is Eric Karch, and I
20 represent the River Des Peres Watershed Coalition which is
21 150 square miles of St. Louis City and County. Our
22 constituency certainly would want us to have default
23 fishing laws for all the streams in Missouri. I also
24 recognize that this whole process is a negotiation and
25 there's two sides of the story. Given that, I think I'd

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1 like to just speak briefly on the segmentation as well as
2 the use attainability analysis which is -- kind have been
3 hot topics.

4 I would recognize that, if we're not going
5 to get fish, we at least have those two elements of this
6 rule that cannot -- can help our side of the story of
7 improving the uses of streams. And, to that issue, you
8 know, our mission as stated is to improve, protect, and
9 restore and repair the River des Pares and its tributaries
10 as a vital national and cultural resource to St. Louis.
11 But we are a little fearful that this rule does not have a
12 clear pathway for improvement. You've heard some
13 testimony to that effect. I'll state that the Metro St.
14 Louis Sewer District has a term called Improve Channels
15 which, essentially, has to do with channels that are
16 concrete lined, but also channels that may just have some
17 rock revetments. I am going to address some issues in
18 this.

19 These are also urban issues, so these are,
20 you know, key to our constituency. We're a little worried
21 that it's very easy to classify streams in the man-made
22 use class as well as the -- I'm sorry -- designated use as
23 well as the modified habitat. And those two designated
24 uses are of very little protection.

25 So, we're trusting that the use

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1 attainability analysis will have a way to follow for those
2 groups. We see that, in St. Louis, we've kind of embarked
3 on the way the water sewer district -- year programs
4 drastically reduce sewer overflows in our streams, the
5 reason they're going to be modified aquatic habitat in the
6 first place, so it's as that program progresses how do we
7 get those streams to raise up. So, that, certainly, is a
8 concern of ours; and once the use attainability analysis
9 is finalized, I hope that what's taken into account is
10 that groups like ours with a staff of one-half person per
11 year don't really have the resources to compete with the
12 other side of this thing. So, at the very least, we trust
13 that this volunteer water quality monitoring data will be
14 accepted in these UAA protocol and, also, we get some good
15 resources to Missouri changing the program to allow us to
16 collect the kind of data that's necessary for these UAA
17 protocols.

18 The second issue has to do with
19 segmentation. Obviously, you've heard about the 100K
20 maps. Just by way of example, watershed without Deer
21 Creek receiving a lot of State and Federal funding, at the
22 moment has a 9-point EPA element watershed plan. It's on
23 the right track to an improved channel. This very creek
24 has sections that are unclassified same sandwiched between
25 sections that are classified, and that segmentation issue

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1 on a microscope basis is 45-mile square watershed presents
2 conflicting goals as to a releasing but also cleaning them
3 up downstream. So, this segmentation, certainly, as
4 previous people have testified, is contrary to the
5 comments scientific, what's going to be, what's currently
6 common scientific strategy of watershed analysis rather
7 than the segmented approach.

8 So, as a second example, Gravois Creek runs
9 through Grant's Farm which has been considered for
10 acquisition by the National Park System. The stretch
11 that's at Grant's Farm is unclassified and, again,
12 stretches upstream and downstream are classified. So, how
13 do we rectify that issue, and I trust that will be part of
14 the UAA protocol. But, allowing us to have a fair
15 standard in that struggle is something I'm asking that be
16 taken into account as that UAA protocol's developed.

17 That's all I have for you. Thank you.

18 CHAIRMAN PARNELL: Questions of Eric?

19 (No response.)

20 CHAIRMAN PARNELL: Holly Neill. Danelle
21 Haake, Stream Team, on deck.

22 MS. NEILL: Okay. Thank you for giving me
23 the opportunity to speak today. My name is Holly Neill,
24 Executive Director of the Missouri Stream Team Water
25 Coalition. If you're not familiar with the Stream Team

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1 Program, the program is nationally known. People from
2 across the nation looks to our Stream Team Program to
3 create one that is highly successful like ours in their
4 state and is used as a national mold. We have over 80,000
5 volunteers in the program and over 4,000 Stream Teams.
6 The Missouri Stream To March Coalition, we support the
7 Stream Team Program. The nonprofit also supports the
8 Stream Team Associations, founded the Stream Team
9 Associations so they can accomplish kind of bigger
10 projects. And we have 18 of those across the state.

11 So, first of all, I would like to commend
12 the Missouri Department of Natural Resources for carrying
13 out a stakeholder process and also for their endurance. I
14 think we've heard that multiple times to produce this
15 proposed ruling. We understand the need to balance
16 interests such as water users, agriculture, recreation,
17 and the resource when creating rulings to protect our
18 water resources or any natural resource. We feel a type
19 of compromise is needed when considering all the interests
20 and economic impact, but we also understand the need to
21 continue to make improvements to the ruling, and we look
22 forward to being engaged in that process.

23 The Missouri Stream Team Watershed
24 Coalition speaks on behalf of the resource, our waters.
25 We support the proposed ruling and realize this is a huge

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1 step in the right direction.

2 We hope you, as members of the Commission,
3 understand the importance of approving this ruling. And
4 by taking steps to classify more of our waterways, we can
5 finally join the rest of our nation in better protecting
6 our Missouri waters. Thank you.

7 CHAIRMAN PARNELL: Any questions of Holly?

8 (No response.)

9 CHAIRMAN PARNELL: Thank you, Holly.

10 MS. HAAKE: Good morning. My name is
11 Danelle Haake, and I represent several Missouri Stream
12 Teams, include the River des Peres Watershed Coalition and
13 the Litzsinger Road Ecology Center for Education and
14 Research, and that's located in St. Louis and operated by
15 the Missouri Botanical Garden. Thank you for the
16 opportunity to share my thoughts with you today.

17 I want to give you a reminder, as you've
18 heard from Holly Neill and Joe Bachant, that the people of
19 Missouri have demonstrated time and again that they care
20 about their water resources. 40,000 volunteers with the
21 Missouri Stream Team program reported over 202,000 hours
22 in 2011. This is a labor equivalent of about 100 full-
23 time employees. And that's just in one year. And if you
24 go to work with volunteers as I have and try to keep them
25 to keep track of their hours and turn them in, you know

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1 this is a gross underestimate of the effort put in by
2 Missouri Stream Teams that year. Of those hours, 16
3 percent were reported from St. Louis County.

4 Not only do Missourians care for their
5 water resources, but they care for their urban water
6 resources. This was also demonstrated quite clearly by
7 the St. Louis community in November 2001 by the passage of
8 a new tax that was approved by 30 -- or, I'm sorry -- by
9 68 percent vote of the Clean Water, Safe Parks, and
10 Community Trails Initiative that cover St. Louis City, St.
11 Louis County, and St. Charles County.

12 The care of Missourians for their water was
13 also demonstrated by the great attendance at the Water
14 Classification Workgroup and the Small Streams Workgroup
15 in 2009. Attendees included a wide range of stakeholders
16 representing state agencies, public utilities, industry,
17 and environmental organizations. These groups worked
18 toward the development of new rules that you've heard
19 about to bring us into compliance with the Clean Water
20 Act.

21 Unfortunately, when the Water
22 Classification Workgroup Meetings were reconvened in 2012,
23 a lot of the environmentally-focused citizen stakeholders
24 were not brought back to the table. Suddenly, language
25 was altered to make the rule vague when it comes to the

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1 aquatic life protections and left large loopholes that
2 undermine protections of some of our most threatened
3 waterways -- our urban streams.

4 As a restoration ecologist with the
5 Missouri Botanical Garden, it is my job to piece together
6 the picture of what is happening in the streams,
7 woodlands, and prairies that I manage. This includes
8 understanding the aquatic and terrestrial plants and
9 animals and being aware of what it takes for them to
10 survive and to thrive. The lands I manage as a paid
11 professional and as a volunteer with the River des Peres
12 Watershed Coalition and the Missouri Stream Team are in
13 urban and suburban watersheds, and are all associated very
14 closely with streams.

15 The streams I work with in St. Louis
16 include small, spring-fed, headwaters tributaries;
17 medium-sized streams that in summer are sustained as pools
18 and flow within the gravel bed; and large streams with
19 continuous low, but highly altered channels. I have seen
20 aquatic life in every one of these streams. I've seen
21 birds, including kingfishers and wood ducks, and mammals,
22 including muskrat and mink, in and along these streams
23 that they rely on for their food and for their dwellings.

24 I have been to the River des Peres,
25 arguably one of the most modified streams in the state.

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1 Some might argue that this River is a man-made conveyance,
2 but it has a long history as a river prior to our
3 modifications and the language of the proposed rule is
4 unclear as to what the status of this river and other
5 modified streams might be. I've seen beaver on the banks
6 of River des Peres. I've seen heron in her channel. I've
7 seen fish in her water, all of this in the portion where
8 the banks are lined with stone and concrete. I have heard
9 the eagles have been seen hunting in those waters. I have
10 seen this and more. There is life in these waters, and
11 I'm asking you to do what can be done to protect it.

12 I have seen life in portions of Deer Creek
13 and Gravois Creek. As mentioned, these areas are not
14 going to be protected according to the Interactive Map
15 made available by the DNR. There are upstream portions of
16 these waters that are to be protected, but for some
17 reason, others have been ignored.

18 There is language in the proposed rules
19 that will allow those who discharge pollution into
20 modified streams -- which sounds to me like any urban
21 waterway -- to argue that the water is too polluted to
22 meet water quality standards without creating an economic
23 burden, so it should never have to meet water quality
24 standards. If this was the intent of the Clean Water Act,
25 then our rivers would still be burning as Joe talked

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1 about. The industrial discharges were expected to clean
2 up their acts, and they did. This certainly created
3 something of an economic burden, but it also brought life
4 back to those rivers, to those streams, and to those
5 communities.

6 In the modified -- as the Modified Aquatic
7 Habitat use is presented, it is a definition of the water
8 that's impaired for aquatic life. I know this because, in
9 previous employment, I've worked with the Iowa Department
10 of Natural Resources and I wrote TMDLs for aquatic life
11 habitat issues. And there's no definition in there of
12 what these reduced standards are that might be met by
13 these modified aquatic habitats. For those reasons, I
14 personally would ask you to remove this use from the
15 amended rules.

16 The citizens of our State have the benefit
17 of some of the most beautiful and majestic streams and
18 rivers in the world. But we have let other historically
19 and ecologically significant waters fall by the wayside.
20 These are the rivers that people of the St. Louis Region
21 have voted to tax themselves to protect. It is these
22 waters that citizens spent 33,000 hours in 2011 to
23 improve. I hope that you will follow the direction of the
24 US EPA and the example of our citizens and fully protect
25 all of the streams, rivers, and wetlands of our State.

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1 Thank you.

2 CHAIRMAN PARNELL: Any questions?

3 (No response.)

4 CHAIRMAN PARNELL: Thank you very much.

5 Todd Sampsell, Director of The Nature
6 Conservancy for Missouri. And Roger Walker has put a card
7 in for effluent only; is that correct?

8 MR. WALKER: That's right.

9 CHAIRMAN PARNELL: Okay. Todd.

10 MR. SAMPSELL: Thank you. Good morning,
11 Commissioners. My name is Todd Sampsell. I'm the
12 Missouri State Director for The Nature Conservancy. The
13 Nature Conservancy is the world's largest conservancy. It
14 is also fish, water, and sign test, so I have a little bit
15 of experience in the issues we're dealing with this
16 morning.

17 As an organization, we hold protection of
18 our fresh water resources in the highest regard, and I am
19 here this morning to -- is that I agree with most of
20 what's been said and urge you to consider adopting these
21 standards. The Conservancy wants to commend the State's
22 efforts to protect the waters of Missouri. We feel by
23 incorporating the natural hydrography state and adopting
24 the permits for this waters will greatly increase a share
25 of waters upon which we all depend for the drinking,

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1 fishing, swimming industry, and other protected for the
2 future.

3 In particular, we're pleased to see several
4 streams of The Conservancy as identified globally
5 significant found here in Missouri will now fall under
6 protection. Secondly, I want to say we appreciate the
7 State's attempt to adopt more refined aquatic habitat
8 designation, and it is better for the fish found in our
9 streams. However, we caution that the implementation of
10 the UAA house protocol should be held to the highest
11 standard. Special care must be taken to ensure all
12 aquatic danger and imperiled species are adequately
13 protected and it should be sought within the association
14 with future changes in the designated use.

15 Third, while proposed provisions are
16 significant positive steps in protecting our resources,
17 there are two additional criteria yet to be addressed. We
18 need to get it on the record, sediments, nutrients
19 consider to threat the integrity of the waters, and we
20 should consider DNR for sediments, nutrients, at the next
21 triennial review.

22 Now, that's what I came planning to say. I
23 wanted to add that, in general, and in agreement with Mr.
24 Bachant, as a scientist, I'm not an attorney, I'm not a
25 politician. I'm not here representing somebody paying for

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1 my time or somebody that I'm beholdng to to be
2 re-elected. I think water is something that we simply
3 cannot compromise on, and I would say nothing's more
4 important now or, in particular, for future generations.
5 This is not -- water is more important than our economic
6 concerns. Water is more important than our private land
7 concerns.

8 Believe me, I'm an advocate for both.
9 Water simply doesn't adhere to boundaries, and as I sit
10 here and listen to, you know, the need to try to reduce or
11 somehow segment or somehow look at how we can weaken these
12 regulations, it seems to me it feels a bit like death by a
13 thousand cuts. We should be resisting the pressure and
14 the temptation to compromise on what cannot be described
15 as anything less than the most important thing that we
16 have to deal with right now. And that's the quality of
17 our water.

18 I haven't yet figured out how to explain to
19 my grandchildren why he can't drink the water, that it was
20 due to something that was good for our economy today, and
21 so I would just urge you to adopt these standards as a
22 step in the right direction, and realize there is still a
23 lot of work to be done and this is something that we
24 simply cannot compromise on. So, thank you.

25 CHAIRMAN PARNELL: Questions of Todd?

0063

1 (No response.)

2 CHAIRMAN PARNELL: Thank you, Todd. We
3 have some extra that need to be sworn in. Steve Nagle,
4 Karen Bataille, if you would please stand.

5 (Whereupon, STEVE NAGLE and KAREN BATAILLE
6 were administered the oath by the Court Reporter.)

7 MR. NAGLE: Good morning. Thanks to the
8 members of the Clean Water Commission for putting together
9 the hearing today, and for our friends at the Department
10 of Natural Resources.

11 My name is Steve Nagle, and I'm really here
12 representing three different groups today. The Regional
13 Open Space Council; St. Louis Regional Open Space Council;
14 the River des Peres Watershed Coalition, and the Missouri
15 Parks Association. I am President of the Missouri Parks
16 Association.

17 I would like to say just really at the
18 start here, hopefully, we're not going to get too
19 concerned with whether waterways are modified or
20 constructed. I mean, what's more modified than the
21 Mississippi River. So, I think we have a lot of rivers
22 and streams that have been modified over time. I would
23 like to really focus on two -- two important rivers and
24 their tributaries, and I'll try to be brief. I'm going to
25 read this as fast as I can with -- hopefully with meaning.

1 The two important rivers and their tributaries
2 that deserve legal recognition and protection under the
3 Clean Water Act are the Meramec River and the River des
4 Peres, which has been previously mentioned. And, then, in
5 terms of State parks, it's critically important to ensure
6 that all rivers, streams, wetlands, and lakes are listed
7 and designated as fishable and swimmable within our
8 Missouri State Park Systems, and these waters be healthy
9 enough to support aquatic life and clean enough for
10 swimming and fishing.

11 We are under the assumption that most all
12 State parks -- we have 85 State parks and historic sites
13 -- that the rivers of the streams that run through these
14 parks are afforded protection under the Clean Water Act
15 and Clean Water Rules of the State of Missouri. However,
16 the streams that feed into the State parks are largely,
17 you know, omitted. With the addition of thousands of more
18 miles to the new water -- new water quality standards, I
19 just so worry we're not muddying the water with all three
20 of our organizations, but we really support the new rules,
21 the caveat, of course, the death is always in the details.
22 We've got a lot more work to do, and I know we're not
23 going to give up until all Missouri waters are protected.

24 The Meramec River is one of the longest
25 free-flowing rivers in the United States, covering 220

0065

1 miles from its source in the Ozarks to the Mississippi
2 River. The River is the primary source -- many of you may
3 know this, John knows this, but maybe not so many people
4 in the audience -- it's a source of drinking water for
5 more than 200,000 people. The drainage basin for the
6 Meramec is nearly 4,000 square miles in central and
7 eastern Missouri and includes major tributaries of the
8 Courtois, Huzzah, Bourbeuse and Big Rivers, and many
9 smaller tributaries.

10 The region does not have adequate
11 protections in place to safeguard its drinking water
12 sources for south St. Louis County and northern Jefferson
13 County. The Meramec enters the Mississippi River near the
14 City of Arnold. The river contains 33 sub-watersheds
15 draining directly into the Meramec River. Most of these
16 smaller tributaries such as Hamilton, Brush Creek, and
17 Grand Glaize -- and I think Grand Glaize has some
18 protection -- but they need to be classified. There's a
19 critical need to protect these water resources for
20 drinking -- drinking water and for habitat for many
21 species of fish and wildlife as well as water for
22 irrigation, industry, and recreation. The St. Louis
23 Regional Open Space Counsel has worked tirelessly for over
24 40 years along with Operation Clean Stream -- a group with
25 thousands of members who consider the Meramec a living

1 tribute to saving a river which we did in the 1970s, and
2 it's all been fishable and swimmable and a crown jewel in
3 Missouri's outdoor legacy.

4 The River des Peres -- brief history here
5 -- means the River of the Fathers, in French, of course, a
6 name given by locals when a mission of Jesuit Catholic
7 priests resided at the confluence with the Mississippi
8 establishing a mission in 1700, roughly 63, 64 years
9 before the founding of St. Louis. In many ways, the
10 history of this river is the history of St. Louis. It is
11 a fascinating piece of history of a once beautiful river
12 winding through a slowly urbanizing landscape then shunned
13 by generations and treated like a ditch.

14 In the upper River des Peres, flooding
15 problems on the University City Branch has occurred
16 several times. This was studied by the Corps of Engineers
17 and further construction for flood control was authorized
18 in the Water Resources Development Act of 1990. Local
19 cost sharing assurance was out of reach. So, the Corps
20 did further evaluation and ultimately determined that the
21 project would, in fact, actually induce flooding
22 downstream. So, in 2009, a value engineer study shifted
23 focus to a non-structural approach involving residential
24 buy-outs in the five year flood plain.

25 Meanwhile, the River des Peres Greenway

0067

1 Project can take advantage of this. What's being planned
2 and implemented is the creation of an 11-mile linear park
3 along the river's course all the way to the Mississippi
4 River. It's part of a larger system of work as part of
5 the River Ring concept of the Great Rivers Greenway
6 District. As most of you know, the River des Peres has
7 been -- functions as an element in the combined sewer and
8 stormwater management system of the watershed. However,
9 Metropolitan Sewer District is now in the process of
10 separating the sanitary and storm water systems which
11 further enables more recreational use of the river.

12 The way we look at our rivers is so crucial
13 to taking care of them. And, in the case of the River des
14 Peres, the trend is now to look at the River in a
15 different light with priorities to improve, protect, and
16 maintain the River and its tributaries as a vital,
17 natural, and cultural resource for the St. Louis Region
18 and future generations.

19 Major tributaries that need protection in
20 the River des Peres Watershed are Engleholm Creek in the
21 upper watershed, Deer Creek in the upper watershed,
22 Gravois Creek in the middle portion of the river.
23 Families and children and diverse aquatic life are
24 frequently observed near and in the water. And, as the
25 previous testimony from Danelle Haake supports, we have

0068

1 documented all sorts -- in fact, the Mayor of St. Louis
2 the other day told us that he saw an eagle down in the
3 River des Peres. So, a lot of these -- there's a lot of
4 antidotes.

5 We hope to really supply a lot of
6 scientific information that really points to the fact that
7 children and families go and there are all sorts of
8 diverse wildlife. Eric Kanch testified a few moments ago.
9 I was working with him on a habitat restoration project
10 just about a month ago where he saw a family of minks
11 fishing, catching fish, in the river, in the bed of the
12 River des Peres next to a fire station. I thought that
13 was incredible. I wish we had pictures, but it was too
14 exciting to even pull out a camera.

15 Even though -- the River des Peres
16 Watershed Coalition is a dedicated group of volunteers
17 formed in 2000 to reflect a broader watershed orientation.
18 The goal in the River des Peres Watershed Coalition is to
19 improve, protect, and maintain River des Peres and its
20 tributaries -- which we've now said several times --as a
21 vital, natural, and cultural resource. That is our
22 mantra.

23 Our long-term goal is to restore flow to
24 the river, to promote natural stream bank restoration, to
25 provide for green infrastructure, to improve water

0069

1 quality, to eliminate the combined sewer overflows, and
2 increase community pride in the river. We perform annual
3 cleanups, partnering with the Metropolitan Sewer District,
4 Missouri Department of Natural Resources, and other State
5 and local agencies, and we have 42 communities through
6 which the river runs, and we work closely with most of
7 those communities.

8 I thank you for allowing me to take your
9 time for my comments.

10 CHAIRMAN PARNELL: Questions of Steve?

11 (No response.)

12 CHAIRMAN PARNELL: Thank you, Steve.

13 MS. BATAILLE: Good morning, Commissioners.
14 My name is Karen Bataille, B-as in boy-a-t-a-i-l-l-e, and
15 I'm here representing Missouri Department of Conservation.

16 I appreciate the opportunity to comment
17 this morning on the proposed amendment to 10 CSR 20-7.031,
18 Missouri Water Quality Standards. The Missouri Department
19 of Conservation's mission is to protect and manage the
20 forest, fish, and wildlife resources of the state and to
21 facilitate and provide opportunity for all citizens to
22 use, enjoy, and learn about these resources.

23 MDC supports the Missouri Department of
24 Natural Resources' proposed amendments to expand its
25 classification system to currently unclassified waters; to

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1 update use designation definitions for the protection of
2 aquatic habitat; and to use information found in the
3 Missouri Aquatic GAP project to implement a tiered aquatic
4 life protection framework. We feel these efforts will
5 ensure that the appropriate protections will be applied to
6 Missouri's streams using the best available scientific
7 resources.

8 In addition, we applaud MDNR's efforts to
9 use the enhanced 1:100,000 scale National Hydrography
10 Dataset and recognize the accomplishments of MDNR's staff
11 to refine the line work using the 1:24K NHD to complete
12 this integration of the GIS database with the GAP project.
13 And this is quite the undertaking. We really appreciate
14 their efforts. These efforts will make Missouri -- will
15 make Missouri a national leader in its approach to
16 implementing water quality standards.

17 The continued development of a
18 comprehensive Aquatic Life Use Attainability protocol this
19 fall to ensure that aquatic life protections are
20 appropriate applied to the newly classified waters is very
21 important to the implementations of these amendments. Our
22 Department will continue to participate in the stakeholder
23 process to provide the data and technical support to this
24 effort.

25 Wetland habitats require the protection of

0071

1 the water quality standards. We agree with the revised
2 wetlands definitions proposed in this rule; however, we
3 strongly encourage MDNR to continue development of
4 wetland-specific criteria to protect these diverse aquatic
5 habitats. MDC looks forward to continued participation in
6 the wetlands stakeholder workgroup.

7 MDNR's leadership in providing an
8 infrastructure to protect the biological integrity of
9 Missouri's aquatic resources is appreciated. Increased
10 protections, as could potentially occur through the
11 proposed Exceptional Aquatic Habitat designated use, can
12 pay high dividends to our resources and Missouri's
13 citizens in the future.

14 So, I appreciate your time, and I'll take
15 any questions, if you have any.

16 CHAIRMAN PARNELL: Questions of Karen?

17 COMMISSION WARREN: I just have a question
18 on referenced the 1100 and the 124; and what was that
19 relationship there?

20 MS. BATAILLE: I'm not the technical
21 expert, but the 1:124K map is -- was used. It's better --
22 defined line work is better than the 1:24K, so they put
23 1:100K line work using the 1:24 details there to the
24 streams. It doesn't include beyond the extensive of
25 1:100K up into the headwaters, but the detail of the 1:24K

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1 to develop the lines.

2 COMMISSIONER WARREN: Okay. Thanks.

3 CHAIRMAN PARNELL: Anybody else?

4 (No response.)

5 CHAIRMAN PARNELL: Thank you, Karen.

6 MS. BATAILLE: Thank you.

7 CHAIRMAN PARNELL: We'll take a 10-minute

8 break. Thanks, everybody, for your inputs and comments,

9 and thank you for your patience.

10 Okay. We need to close this discussion.

11 The Commission will continue to accept written comments on

12 the proposed Rule 10 CSR 20-7.031 on September 18, 2013.

13 Please submit your written comments to John Hoke, Water

14 Protection Program, Missouri Department of Resources, P.O.

15 Box 176, Jefferson City, Missouri, 65102; and, if you

16 couldn't copy that down or don't have it, we have it up

17 here for you to take.

18 Okay. We'll break for 10 minutes. We'll

19 come back at 11:00.

20 (Whereupon, a recess was taken at 10:50

21 a.m.)

22 (Whereupon, the record resumed at 11:02

23 a.m.)

24 CHAIRMAN PARNELL: Let's resume our

25 meeting, please, at 11:02.

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1 Several Commissioners have asked if they
2 could raise a few extra questions of John Hoke with the
3 implement commentaries submitted. I need to go through
4 the formality of reopening the public hearing for Water
5 Quality Standards.

6 I hereby incorporate the opening statement
7 that was previously shared, and we will resume the public
8 hearing on the proposed amendment to Rule 10 CSR 20-7.031,
9 Water Quality Standards.

10 Thank you, John. Commissioners?

11 MR. HOKE: Thank you, Mr. Chairman.

12 COMMISSIONER WARREN: I just had a couple
13 quick questions. How many miles -- we talked about the
14 1:100, 1:24, et cetera. I know there's a lot of
15 discussions about how many more miles have been included
16 with these standards, which is wonderful. But, using the
17 1:100 versus the 24, about how many miles of stream are
18 estimated to still be unclassified?

19 MR. HOKE: I don't have the exact, as far
20 as the number.

21 COMMISSIONER WARREN: Approximately.

22 MR. HOKE: Approximately. It's probably in
23 the neighborhood of 50 to 60,000 statewide.

24 COMMISSIONER WARREN: That are still
25 unclassified?

1 COMMISSIONER WOOD: Say again?

2 MR. HOKE: The number with me is probably
3 in the neighborhood of 50 to 60,000 statewide. Those are
4 typically small half-mile, water mile segments, the tops
5 of the -- all the watersheds we have in the state. So, in
6 aggregate, probably that. I could get a number for you.

7 COMMISSIONER WARREN: I know it was quite a
8 bit more than watersheds. Considering, I think, with some
9 of the testimony today, it helps us appreciate what we
10 might be considering to be a rather insignificant nexus of
11 water, they have a great deal of value and probably are
12 more familiar to a lot of people than might not have
13 understood to be, especially with the segmentation, and a
14 lot of this being not considered. So, I think it's
15 important to keep in mind how much is not being addressed
16 with these standards, as good as these standards are, and
17 this is a start.

18 In the UAA protocol stakeholders groups, I
19 don't know how that's structured. I could have looked it
20 up, but do we have, like, Stream Team represented in some
21 of these other organizations? What is the balance of
22 representation? I know there's always invitation, but, I
23 mean, as far as active working participants?

24 MR. HOKE: We do maintain sign-in sheets
25 for all of our meetings available on our website. Core

0075

1 group of staff, Coalition standards -- Peter Goode attends
2 on behalf of Coalition. Agriculture, industrial,
3 municipal present. It ebbs and flows to throw upon the
4 term, but Stream Teams have been involved.

5 What we're finding now is there seems to
6 be, you know, some contentious meeting difficulty, devil's
7 in the details, and that's more technically-minded folks
8 to go in from all of those different groups to sort of
9 iron out those details in the six weeks or whatever that
10 we have left from now and the meeting.

11 COMMISSIONER WARREN: This was being
12 participated in the stakeholder group that the challenge
13 with some of these not being represented has to do
14 probably with affordability as well not a lot of these
15 people are able to take off of work because they're not in
16 a paid position to participate.

17 And, so, with the UAA protocol is my
18 concern is we keep hearing about the affordability and how
19 it's going to cost to take streams off of certain
20 designations, but my concern is how affordable will it be
21 -- these groups like some of the Stream Team groups,
22 citizen groups, to have these streams protected that they
23 help and they care about, and how much focus will be given
24 in the protocol development of affordability and getting
25 these streams classified and recognized?

1 MR. HOKE: So, yeah. The affordability,
2 the procedure is not -- everyone can invoke consultants at
3 thousands of dollars. UAA -- yeah. It's going to be a
4 balance of the folks that are putting this together to
5 look at making sure it's transparent, making sure that
6 it's streamlined, but yet maintain sort of the rigor that
7 we're required to have on the Clean Water Act for those
8 factors.

9 We want to strike a balance where common
10 sense needs to come into play when you're looking at to
11 factor the -- for example, the flow. If there's no flow
12 there, we need to be able to demonstrate when do you
13 determine that, how often do you, how much data do we
14 need, and what sort of measurements are required.

15 Obviously, we like to incorporate as much
16 through the base state that we have, how much data we're
17 able to collect. Some more complex situations, we may
18 need to do more structured surveys with cross-sectioned
19 surveys, and that will rely on technical time as well as
20 our resident experts to have something that meets all
21 those sort of criteria. You make want to make it easy to
22 use, transparent, predictable.

23 Point well taken. We need to look at that.

24 COMMISSIONER WARREN: I know there might be
25 what I determine to be a dismissive attitude toward

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1 ephemeral streams and stuff like that, and standing pools.
2 I have an ephemeral stream that runs through my property,
3 and seems to be every time I have kids out at my place,
4 they're playing in that stream if there's water or not.
5 They're finding crawdads, finding things out there.

6 So, how do we balance that and, for
7 citizens that may not be able to afford the resources that
8 it would take to classify these, or take these streams
9 into consideration? I would like to see something. The
10 on-ramp should be much easier than the off, because my
11 understanding of the Clean Water Act is, in an ideal
12 world, we have all classifications, all waters are
13 protected. So, I know there's a lot of pressure, and we
14 hope that that gets accomplished and gets the protocol
15 developed. But I certainly am going to look for that
16 perspective in these criteria.

17 MR. HOKE: Okay. We'll definitely take
18 that into -- pass that -- most of the folks in the
19 stakeholder group are in the room currently, so I'm taking
20 that note as well.

21 CHAIRMAN PARNELL: Any others?

22 COMMISSIONER McCARTY: I heard a couple of
23 the Commissioner's speak of some streams being ignored. I
24 continue to try to wrap around the 1:100,000 deal. Can
25 you explain the 1:100,000, how that would happen, how that

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1 would work?

2 MR. HOKE: Yeah. The rule of that does two
3 things. It establishes, you know, basically, from a
4 hydrological standpoint, what waters should have default
5 uses. It's foaming streams, streams that maintain
6 permanent pools. Both of those have confidence aquatic
7 life will be there and needs to be protected. The other
8 part uses a joint data set to more broadly cast in a
9 victor manner where we know those lines should be
10 currently.

11 As with any human creation, that data set
12 has some flaws in it. There are waters that are included
13 that probably shouldn't be, and there are segments that,
14 basically, the -- the lines don't connect, and there's a
15 gap between those. My staff is currently working to close
16 those gaps. And, anywhere that folks find those gaps, we
17 encourage them to send them to us. You've got a blue line
18 here (indicating), blue line here (indicating), nothing in
19 between where there should be. We'll go in and fix those
20 gaps. That's to say one line stops here (indicating), the
21 other one up here (indicating), and just needs to be
22 closed, we can do that fairly right away.

23 CHAIRMAN PARNELL: Which is why the data
24 set is a moving target, perhaps?

25 MR. HOKE: Our goal is to have, by the time

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1 we adopt this, that most of those gaps flows and those
2 errors fixed. We're not going to get them all. It's a
3 very laborious process to do that. The hope is that
4 narrative part of permanent pool printed streams covers
5 those. That are gaps in the rule we will get to
6 eventually.

7 CHAIRMAN PARNELL: What is your reaction to
8 having some sort of benchmark date or benchmark moment in
9 time so that it's not floating forever into the future?

10 MR. HOKE: Right. I think, like anything,
11 conversion, one point on in HD and Habitat B, starting
12 point. And, as we make up dates, we're able to do those.
13 But we do have a base case.

14 CHAIRMAN PARNELL: That is your intention?

15 MR. HOKE: Yeah. How we implement version
16 1.1 into our decision-making process may take a little
17 more, you know, detail as far as, you know, permits and
18 things like that, what process will we work out with EPA
19 to see that happen. So, yeah, I think from today's
20 standpoint is a good place to start with it. We have a
21 version we can keep track of, here's the tweaks we make
22 from version 1.0 to 1.1, and we have a very transparent
23 year to do it.

24 CHAIRMAN PARNELL: Just wanted to make
25 sure. Any other questions of John?

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1 COMMISSIONER WARREN: I seem to remember --
2 although my memory's not the best -- but last November,
3 whenever we had these standards delayed or prolonged, that
4 wetlands were classified as a primary classification. We
5 write that in; then, Well, it's not necessary. And, so,
6 now, although it's we trust the criteria, I can't say not
7 there another can be as many as to another word, but, I
8 mean, what's the timetable on the nutrients for wetlands?

9 MR. HOKE: We do have provisional criteria
10 for lakes. That is something we're working on. Also,
11 we're working on nutrient time for closing waters, streams
12 as well. Those discussions -- we'll fire those up here in
13 the fall; and once we -- UAA protocol also, obviously, is
14 our main concern right now. That's where we put a lot of
15 our weight, but nutrients are in that work group and we'll
16 move that forward down the line, hopefully, with the next
17 triennial review. Doesn't look like any more than 18
18 months.

19 COMMISSIONER WARREN: You say lakes and
20 stream wetlands?

21 MR. HOKE: Lake and streams criteria open
22 that group.

23 COMMISSIONER WARREN: Wetlands aren't even
24 on the board?

25 MR. HOKE: Wetlands are still on the board

0081

1 and in the process. We're so committed to the fact, we
2 applied for an EPA grant to help us get money and
3 resources to establish wetland water standards. We're
4 currently supplementing the information we supplied
5 already based. And, hopefully, we'll get that grant, but
6 that grant will help us have resources to do monitoring of
7 what type of wetlands are there. We reference wetland as
8 given watershed, what are the criteria that should apply,
9 how would you develop criteria for wetlands.

10 COMMISSIONER WARREN: It hasn't really been
11 started yet?

12 MR. HOKE: The grant applicable is in the
13 EPA hands, and they say we're a good candidate, on part of
14 our ongoing work process for wetlands. This is just the
15 first step.

16 COMMISSIONER WARREN: Thank you.

17 MR. EPPLEY: Before you close, you should
18 Ask if there's any other persons who would like to
19 testify.

20 CHAIRMAN PARNELL: All right. Having given
21 the Commission a chance to follow up, are there any other
22 people in the audience that would wish to have something
23 to say?

24 (No response.)

25 CHAIRMAN PARNELL: All right. Thank you,

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1 John.

2 MR. HOKE: Thank you.

3 CHAIRMAN PARNELL: I hereby incorporate the
4 closing statement previously shared; and, on behalf of the
5 Commission, I thank you everybody who has participated in
6 this process.

7 (Whereupon, the record ended at 11:19 a.m.)

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1 C E R T I F I C A T E

2 STATE OF MISSOURI)

) ss.

3 COUNTY OF COLE)

4 I, Pamela S. Gentry, Certified Court
5 Reporter with the firm of Midwest Litigation Services, do
6 hereby certify that I was personally present at the
7 proceedings had in the above-entitled cause at the time
8 and place set forth in the caption sheet thereof; that I
9 then and there took down in Stenotype the proceedings had;
10 and that the foregoing is a full, true and correct
11 transcript of such Stenotype notes so made at such time
12 and place.

13 Given at my office in the City of
14 Jefferson, County of Cole, State of Missouri.

15

16

17

Pamela S. Gentry, CCR #426

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0001

1 DEPARTMENT OF NATURAL RESOURCES
MISSOURI CLEAN WATER COMMISSION

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6 In Re: 10 CSR 20-7.015

Effluent Regulations

7

Public Hearing

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10 September 11, 2013

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18 (Starting time of hearing: 11:22 a.m.)

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I N D E X

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1 DEPARTMENT OF NATURAL RESOURCES MISSOURI CLEAN WATER COMMISSION

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In Re: 10 CSR 20-7.015

Effluent Regulations

7

Public Hearing

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September 11, 2013

Department of Natural Resources

11

Lewis and Clark State Office Building

LeCharrette/Nightingale Conference Rooms

12

1101 Riverside Drive

Jefferson City, Missouri

13

14

BEFORE:

Todd Parnell, Chairman

Buddy Bennett, Commissioner

15

Wallis Warren, Commissioner

Dennis Wood, Commissioner

16

Ashley McCarty, Commissioner

17

ALSO PRESENT:

John Madras, Director

Water Protection Program

18

Daren Eppley, Counsel

Assistant Attorney General

19

Malinda Steenbergen

Commission Secretary

20

21

REPORTED BY:

22

Ms. Pamela S. Gentry, CCR

Missouri CCR No. 426

23

Midwest Litigation Services

3432 West Truman Boulevard

24

Suite 207

Jefferson City, Missouri

25

(573) 636-7551

0004

1 (Starting time of hearing: 11:22 a.m.)

2 P R O C E E D I N G S

3 CHAIRMAN PARNELL: Commission will begin
4 the public hearing on the proposed amendment to 10 CSR
5 20-7.015, Effluent Regulations. These rules were
6 published in the Missouri Register Volume 38, Number 12,
7 June 17, 2013.

8 The purpose of this public hearing is to
9 give the Department the opportunity to provide testimony
10 and to provide an opportunity for the public to write
11 comments on the proposed rulemaking. This public hearing
12 is not a form for debate or resolution of issues.

13 Commission asks everyone to keep your
14 comments to five minutes, if at all possible. I think we
15 did a pretty good job first time around. I applaud and
16 thank you for being here.

17 First, the Department will testify;
18 following the Department's testimony, Commission will give
19 the public opportunity to comment. I ask that all
20 individuals present fill out an attendance card so our
21 records are complete. If you wish to present verbal
22 testimony, please indicate that on your attendance card.

23 Commission is holding this hearing to
24 assist the public in commenting on proposed rulemaking.
25 Public period will close -- public comment period will

0005

1 close on September 18, 2013, at 5 p.m.

2 And come forward if you wish to present
3 testimony; please speak into the mic, and begin by
4 identifying yourself to the Court Reporter.

5 The Court Reporter will now swear in anyone
6 wishing to testify at this public hearing before the Clean
7 Water Commission today. All wishing to provide testimony,
8 please stand.

9 (Whereupon, the oath was administered by
10 the Court Reporter to people standing.)

11 CHAIRMAN PARNELL: Thank you. John, you're
12 up.

13 MR. RUSTIGE: Good morning, Commissioners.
14 My name is -- for the record, my name is John Rustige, and
15 I'm Chief of the Wastewater Engineering Unit and Water
16 Protection Program. Like the previous rule, you heard
17 we've been working on the effluent rule for quite a long
18 time, not nearly as many years, probably only about a year
19 or so, and the list of changes for the effluent rule is
20 relatively long. But, before I wanted to brief you on
21 those changes, I did want to take a moment to sort of
22 highlight the significant stakeholder involvement that's
23 associated with this rulemaking.

24 The Department hosted seven meetings,
25 including one meeting after the Regulatory Impact Report

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1 was published. And the stakeholders were very actively
2 involved in those meetings, and there's many examples of
3 rule language in the proposal that was refined and
4 improved as a result of all the discussions. The
5 Department shared a draft of the rule when the Regulatory
6 Impact Report was published, and several stakeholders took
7 the time not just to provide comments on the Regulatory
8 Impact Report but also on the rule language itself. So, I
9 think we have a very solid, very mature rule here, and
10 it's been improved considerably by all that effort.

11 So, as I mentioned, the list of proposed
12 pages to the rule is quite long; so, instead of getting
13 sort of too deep into the weeds on all the details, I'll
14 just try to note some of the changes -- highlight some of
15 the changes that we're making and proposing.

16 The first major change is the addition of
17 language in Section 9 of the rule that will lay out all of
18 the general methods in which an effluent limit can be
19 developed. Effluent limits can be technology-based; they
20 can be based on water quality consideration. Limits can
21 be based on Federal effluent guidelines; they can arise
22 from TMDLs. Limits can also arise during the
23 Antidegradation reviews, and then, lastly, they can come
24 about because of legal agreements or variances from the
25 Commission. What the proposed language does is simply

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1 list all those pathways for which an effluent limit can
2 come into being.

3 As I mentioned, the primary rule -- primary
4 functions of the rule is to set technology-based effluent
5 limits, and one of those limits is pH. The proposed rule
6 returns the technology-based pH range back to 6 to 9. And
7 during previous revisions of the rule, in response to an
8 EPA comment, the pH range was changed to 6.5 to 9.0 to
9 reflect the water quality standards. And this just wasn't
10 correct. In most cases, applying the technology-based
11 limit of 6 to 9 will be sufficient to protect Missouri's
12 streams because of the buffering capacity of many streams.
13 There are times where a different pH range is warranted,
14 and these will be allowed so long as the stream is being
15 protected.

16 In addition, the proposed language allows
17 for alternative limits during higher stream flow regimes,
18 and sometimes this is referred to as tiered limits, and
19 the rule -- the proposal also explicitly allows the use of
20 local stream data to adjust the limits. So, as an
21 example, you could use local hardness data to establish
22 metals limits because metals toxicity is a function of
23 hardness.

24 Also, in Section 9 of the rule is the
25 addition of language that details the Whole Effluent

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1 Toxicity testing requirements. The Department has been
2 placing WET testing requirements in permits for many years
3 now, and has relied on the Federal regulations and,
4 really, State rule and policy for instituting these
5 requirements. And the attention of the amendment --
6 attention of the rule language is just to be clear about
7 when WET tests are required and how they are to be
8 implemented.

9 There are a few other additions to Section
10 9. Paragraph (9)(D)7 will require the -- excuse me --
11 require quarterly monitoring of nutrients, total nitrogen
12 and total phosphorus, and it requires that for facilities
13 that have a design flow greater than 100,000 gallons per
14 day. And the purpose of this monitoring -- the purpose of
15 this requirement is to gather information about how
16 effective different treatment technologies are in Missouri
17 for treating for nutrients. So, as the Department works
18 and moves to the next phase of implementing a nutrient
19 strategy, we'll have that data available to help us make
20 decisions about how to proceed.

21 The next change to the rule in Section 9 is
22 Subsection (9)(B), and that deals with disinfection
23 requirements. And the most significant change here
24 involves the added requirement of short-term E. coli
25 limits. These are weekly limits for POTWs and daily

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1 limits for private systems. The water quality standard
2 for bacteria in Missouri streams is based on a seasonal
3 average and permits at one time were drafted on that
4 basis.

5 And some of you may recall that this
6 practice of writing permits that way led to the EPA
7 interim objection particular to the Lake Tishomingo permit
8 because the Clean Water Act requires all permits (sic) to
9 be written -- limits to be written on a short-term basis.
10 And, at that time, we brought that issue to the
11 Commission, and since late 2010, all permits have been
12 written with these short-term limits. And, in addition,
13 at the January 2011 Commission hearing meeting, we -- a
14 group of permit holders raised an issue related to the
15 ongoing expense of monitoring for E. coli monitoring on a
16 weekly basis. And, at that meeting, the Commission
17 directed Staff to reduce the frequency of monitoring for
18 those facilities, the smaller ones, the ones that had
19 100,000 gallons per day design or less.

20 And the Commission directed Staff at that
21 time to amend this regulation to reflect those decisions.
22 And, so, the proposal before you incorporates those
23 changes.

24 A new set -- a new subsection, Subsection
25 (9)(C), has also been added, and that rule language

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1 directly references the Federal rule regarding Schedules
2 of Compliance, and incorporates that. These schedules are
3 just a way that we use a method we use in permits to give
4 applicants time to engineer, finance, and construct these
5 facilities so that they can meet those permit limits. As
6 a supplement to this proposed rule language, Staff
7 continues to rely on a technical policy document which
8 outlines how different situations and circumstances
9 justify adjustment of these schedules.

10 Another change of the rule is an explicit
11 reference to electronic reporting. The rule's being
12 amended to allow urgent reports to be conveyed through
13 electronic methods instead of just solely relying on a
14 telephone call. And that's intended to make it easier,
15 both to record this evidence and, also, to help us setting
16 aside and make that information more available to Field
17 Department Staff and a better system to handle that
18 information.

19 In the losing stream section of the rule,
20 Section 4, a paragraph has been added to deal with nitrate
21 pollution. The concern here is that nitrates and
22 wastewater discharges to losing streams could find their
23 way into drinking water wells. And, in many cases, the
24 Department's placed end of pipe nitrate limits of 10
25 milligrams per liter on a monthly average, and that limit

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1 -- that practice is based on a number of assumption. For
2 instance, that all losing streams discharge -- recharge
3 aquifers used for drinking waters, and there's no
4 dilution, and there's no degradation of these nitrates.

5 But research has shown that there really
6 aren't any cases in Missouri of wastewater being or
7 directly causing problems from nitrates. It's really an
8 issue where nitrates are showing up, it's really a source
9 of Agriculture using these chemicals. So, the proposed
10 rule language was drafted to allow for judicious placement
11 of nitrate limits and calls for them only when the
12 Department has a specific concern about an impact to a
13 specific well. So, the default assumption will be that no
14 limits will be required; and, again, only required if we
15 can conclude that there is a well that warrants
16 protection.

17 Another change to the rule is the addition
18 of some flexibility with regard to monitoring frequencies.
19 Language has been added throughout the rule that will
20 allow the Department to require less frequent monitoring
21 in cases where facilities consistently meet their limits
22 and where the monitoring results are not highly variable.

23 In the lakes section of the rule, Section
24 3, the existing rule establishes phosphorus limits for
25 facilities that discharge into the watershed of Table Rock

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1 Lake. And the schedules by which these facilities need to
2 comply has actually already passed, so, to clean this up,
3 the proposed rule simply eliminates those schedules and
4 facilities -- all facilities discharging now into that
5 watershed must simply meet those phosphorus limits.

6 I have one last issue to discuss, and it's
7 an important one. It's the issue of bypassing. Bypassing
8 is a condition in which water is diverted around a
9 particular treatment process at a wastewater treatment
10 plant. The Department is proposing in this rule to
11 substitute the current language and adopt, essentially,
12 the Federal definitions. And, by taking that approach,
13 what we've -- what we'll create is a situation where
14 facilities won't face sort of two separate definitions and
15 rules regarding bypassing and just, essentially, have to
16 follow the Federal definition.

17 The Federal definition makes it clear that
18 bypassing is prohibited except in cases where it's
19 necessary to prevent loss of -- loss of life, personal
20 injury, or severe property damage, or when quote "there
21 are no other feasible alternatives". And both the
22 stakeholders and the Department have concerns about this
23 business of no other feasible alternatives and how you
24 make that determination. EPA really hasn't defined this
25 by rule, and it's become quite an issue, actually, on the

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1 national level.

2 Now, for some time, EPA has also been
3 asserting that blending in facilities constitute a bypass.
4 Now, blending typically happens during a wet weather event
5 wherein the flow to the treatment plant, it's at a very
6 high rate. And, when that happens, some facilities are
7 operating such that partially-treated wastewater is
8 blended back to fully-treated wastewater prior to
9 discharge. And, because a lot of water that reaches the
10 plant during those conditions is storm water, the influent
11 to the plant is relatively dilute, and the facilities are
12 typically able to meet their effluent level. So, it's
13 really not a water quality issue.

14 Now, EPA's opinion that all blending is
15 prohibited was recently challenged and in the Iowa League
16 of Cities case. On March 25th of this year, the 8th
17 Circuit Court of Appeals found that EPA's policies
18 regarding this matter were actually functioning as a
19 regulation and they hadn't gone through the proper
20 administrative paths to establish these policies as a
21 rule. And, therefore, the Court found that EPA's
22 interpretation that blending in all cases constitute a
23 bypass is not correct. And EPA petitioned to the Court to
24 rehear the case; but, on July 10th, the Court denied EPA's
25 request.

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1 So, in light of all this happening at the
2 Federal level and with these cases, we do expect EPA, at
3 some point, to get a -- to revise their definition of
4 bypass or make further rules about blending and bypass.
5 Perhaps, those changes will be complicated by further
6 legal issues.

7 So, given all those circumstances, the best
8 place for Missouri to be is just simply adopt the Federal
9 rule as it exists today. Missouri's -- Missouri's
10 facilities already face that rule, and if those things
11 change at the Federal level, or either with Federal rule
12 changes and court decisions, then from that place we can,
13 in Missouri, adapt to that and make changes as they are
14 appropriate for Missouri. So, today's proposal just
15 adopts the Federal definition for bypass.

16 Regarding Sanitary Sewer Overflows, the
17 effluent regulation as it exists today currently
18 explicitly prohibits that. But the rule doesn't define
19 what an SSO is. So, the Federal rule actually doesn't
20 define SSOs, either; and, in fact, the Federal rules don't
21 even directly prohibit SSOs. The way EPA enforces this is
22 they look at two paths on SSOs. They either issue
23 violations to facilities for unpermitted discharges or
24 they issue violations for failure to properly maintain
25 facilities. So, instead of the State of Missouri sort of

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1 struggling to define exactly what events constitute an
2 SSO, um, and perhaps get into conflict with EPA over that
3 issue, what the Department is proposing to do is take the
4 same approach as the Federal rules. And it's just
5 proposing to eliminate the SSO prohibition in the rule
6 and, instead, the standard conditions and permits we write
7 will simply require facilities and permittees to report
8 any noncompliance that has the potential to endanger human
9 health or the environment, and do that report in 24 hours.

10 So, to be complete, there are, believe it
11 or not, a number of other things -- changes we've made to
12 the rule, mostly organization, minor wording things. It's
13 a pretty comprehensive proposal, and there really are a
14 lot of moving parts, and that's why I wanted to go through
15 all that with you. But I certainly appreciate your
16 attention this morning.

17 CHAIRMAN PARNELL: Commissioners, any
18 questions?

19 COMMISSION WARREN: Just one quick
20 question. I think this has been brought up before on the
21 blending and the lawsuit with the EPA. To my
22 understanding, that was a legal basis and not a scientific
23 basis for that lawsuit, and that change was procedural
24 versus science?

25 MR. RUSTIGE: I read -- I read the -- I

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1 read the decision. I'm not an expert on the case. But I
2 think that's probably a fair assessment.

3 MR. EPPLEY: In fact, two letters -- EPA
4 failed by the Court's procedural act. They also did
5 address the substance of the rule, but it was procedural
6 in nature.

7 COMMISSIONER WARREN: Thank you.

8 CHAIRMAN PARNELL: Any other questions.

9 (No response.)

10 MR. RUSTIGE: Thank you very much.

11 CHAIRMAN PARNELL: Thank you, John.

12 Okay. We'll take comments from the floor.
13 I think everybody has been sworn in. We'll start with
14 Roger Walker; and Phil Walsack on deck.

15 MR. WALKER: Good morning, Mr. Chairman,
16 members of the Commission. My name is Roger Walker, for
17 the record. I'm Executive Director of REGFORM. I work
18 closely with Kevin Perry, and he has already described
19 what REGFORM does. My comments will be limited to WET
20 test provisions.

21 Two points. At first, one, I wanted to
22 thank the Commissioners for your service, and I know the
23 timing and effort and energy, especially this Commission,
24 how many efforts you have to deal with, and I sincerely
25 thank you for your efforts. And it can't be the money, so

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1 it's got to be public service.

2 The other issue is on the issue of these
3 WET provisions. We met many times with the Department and
4 traded information back and forth. You know, we've
5 appreciated their effort. I tell you, John, you guys have
6 bent over backward to meet with us, hear our concerns.
7 So, why am I here? A couple different reasons.

8 We're here to, really, I guess, just to
9 emphasize that our goal is to encourage where we can in
10 the flexibility, clarity, reducing regulatory burdens, and
11 reducing some of the costs, both to our REGFORM members
12 and to the Department, and doing all that while not
13 impacting water quality.

14 I think what we're looking at here and how
15 we see some of the these additional comments -- and we'll
16 provide others here in writing -- these are impacting
17 water, these are impacting the cost to supply the amount
18 of information you need, the flexibility, some of the
19 clarity. That creates some obstacles. You know, not, you
20 know, rule-disagreeing obstacles, but just things that we
21 think would make it better for our members to comply with
22 period.

23 Now I'll list the three of these. They're in
24 here, you know, just for example, the multi-dilution WET
25 tests should not be required in all instances. There are

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1 places where it's -- multiple dilution is not required.
2 Some dilution should suffice. That can be spelled out in
3 a way that would save some of our members significant
4 money and time.

5 Second, there's no scientific justification
6 that Missouri WET regulations be written to allow only the
7 use of two test species. EPA has a little bit more
8 flexibility. We would like to see that flexibility
9 adopted.

10 The proposed amendments require the use of
11 toxic units. Toxic units is a well-accepted option. But
12 there -- also, there's another option used in the EPA
13 Technical Support Documents, while percent effluent at the
14 critical dilution. This could be the answer for this for
15 the Department. I guess my point is that the
16 Department's, you know, done agreements. The rules has
17 been modified and changed, and we've come to a lot of
18 agreement. I don't know why we haven't agreed on these
19 final points.

20 That's possible to hear response to our
21 comments. They've listened. We have a few more comments
22 we want to make. Take note, look around, and say, Look,
23 these aren't -- these aren't Water Quality Protection
24 issues. These are how companies can save money and time
25 in resolving how they handle the cost.

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1 And, with that, I will leave; and thank
2 you, again, for your service, and thank you, Department,
3 for all their hard work, both on this rule and any other.

4 CHAIRMAN PARNELL: Questions of Roger.

5 (No response.)

6 CHAIRMAN PARNELL: Thank you, Roger.

7 Phil Walsack; Kevin Perry on deck.

8 MR. WALSAK: Hello, Commissioners. Phil
9 Walsack, Missouri Public Utility Alliance. My comments
10 are going to be very specific related to that bypassing
11 notion that was very well done by Mr. Rustige, to explain
12 in simpler terms what's going on.

13 My issue with the rulemaking is that, the
14 notion of bypassing, there are no costs associated with
15 the notion of bypassing. The language says the amendment
16 is substantially about the Federal definition of bypassing
17 and, therefore, there are no cost considerations. That is
18 troublesome, because there are costs involved with
19 adopting the Federal definition, even though it's the
20 Federal definition.

21 This is a more stringent protocol than we
22 have used before. This is a more stringent regulation
23 that we haven't used before. There are many many pieces
24 of it that are better, but there are still costs
25 associated with that. And that was our objection,

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1 continued to be our objection for going on two years now,
2 is that has costs in Missouri.

3 The blending notion is critical because, as
4 I illustrated to you at the last meeting, that just those
5 folks that have an outfall 002 (ph), the dollar amount
6 just for those 55 cities is around \$700 million -- \$687
7 million, if my memory serves me correct. This is a big
8 deal just for those 55 cities, not the other 800
9 municipals, cities, villages, and towns in this state.
10 So, the fact that we are not addressing costs here is
11 important.

12 Thank you, Commissioners.

13 CHAIRMAN PARNELL: Yes, sir. Fellow
14 Commissioners?

15 (No response.)

16 CHAIRMAN PARNELL: Thank you, Phil.

17 MR. WALSACK: Thank you.

18 CHAIRMAN PARNELL: Kevin Perry; with Robert
19 Brundage on deck.

20 MR. PERRY: Good morning, Commissioners.
21 Kevin Perry with REGFORM, the Regulatory Environmental
22 Group for Missouri. Sorry to subject you to two steps of
23 testimony from REGFORM, but it's just a wrinkle in our
24 internal distribution of labor. So, I don't do WET
25 testing.

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1 Very simple set of comments. We encourage
2 this Commission to adopt the proposed rule, we support it,
3 and we ask for you to adopt it.

4 Secondly, we just want to acknowledge the
5 Department for making the change in the pH range. It was
6 needed, and they received our comments and incorporated
7 that, and we're very appreciative of it.

8 So, thank you very much. Questions.

9 (No response.)

10 CHAIRMAN PARNELL: Thank you, Kevin.
11 Robert.

12 MR. BRUNDAGE: Commissioners, Robert
13 Brundage, Newman, Comley, Ruth here in Jefferson City. I
14 want to thank John Rustige for his leadership on this
15 Committee. It's very refreshing to work with that
16 Committee because John and his staff are very forthright
17 on some of the process they experience trying to write
18 permits, and we're able to work through a lot of those,
19 and this rule makes substantial progress in that regard.
20 There are still some issues that really didn't get
21 resolved, but there's still a lot of good things in this
22 rule.

23 In regards to the WET testing, again, whole
24 effluent toxicity testing that Roger Walker talked about,
25 I agree with Roger's points. I'm going to reiterate two

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1 of the points that he made. As a general rule, I would
2 advocate that our rule does not tie our hands. That
3 allows many flexibilities and all the guidance there is in
4 implementing WET testing.

5 Roger mentioned a few of the areas where
6 the rule is more stringent than the EPA rule and ties
7 DNR's hands to certain things. Toxic units is one
8 example, multiple dilution species, those kind of things.
9 So, if the rule can be written to more closely match the
10 EPA rule, that would be a good thing. Roger mentioned the
11 multiple dilution tests, and I'm not sure if that -- if
12 you understood his comment or not, but I'll explain it in
13 maybe a different way.

14 Many discharges we have WET testing
15 requirements on are located on smaller streams that may
16 not have any flow during a certain part of the year. So,
17 the Department says, If we're going to test your effluent
18 to see if these organisms survive, it has to be a hundred
19 percent of your effluent. We're not going to dilute it
20 with any other dilutions. It's just a hundred percent.
21 So, if your organisms do not survive, then that's a
22 problem. So -- but the Department's rule says you have to
23 do a multiple dilution test regardless of whether the
24 Department says their standard of, basically, pass or fail
25 is 100 percent.

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1 So, what we're saying is do not make us do
2 multiple dilutions. So, if you go to a laboratory and
3 say, I want you to do one dilution, a hundred percent
4 effluent, or as the Department thinks, do multiple, six
5 different jars, they're going to charge you about 70
6 percent more. Really, that doesn't provide much more
7 information.

8 Where multiple dilution is made would be
9 appropriate, certainly, is that if you fail -- if you kill
10 some of those organisms and you fail the tests, then you
11 want to know how toxic was my effluents, and permits
12 already require you to go back and do follow-up testing.
13 That's when it's appropriate, you maybe dilute your
14 effluents a number of different times and see if it was
15 barely toxic or really toxic. And let's -- we've got to
16 figure out what the problem is.

17 So, we would hope that the Department would
18 write the rule that, in certain instances, you can use a
19 single dilution test. I think I will stop my testimony
20 there and just submit just a few other things in writing.
21 But the others have, basically, testified and hit on some
22 of my points. And thank you for the opportunity.

23 CHAIRMAN PARNELL: Yes, sir.

24 (No response.)

25 CHAIRMAN PARNELL: Thank you, Robert.

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1 Trent Stober.

2 MR. STOBBER: It's still morning. Good
3 morning. Yeah, we've got another 15 minutes, and I swear
4 I won't go past the morning here. So, good morning.
5 Trent Stober with HDR. I just have a couple of comments.
6 I won't overlap with any of these as well; but, again,
7 other than kudos to John Rustige and folks at DNR about
8 putting together a great collaborative effort to revise
9 our effluent regulations and bring them up to speed more
10 with the way that the Department does business.

11 As related to permit limitations and so
12 forth, I think the regulation's fairly transparent and
13 clear now on how to set limits, which is one of the
14 aspects that several folks had talked about. One thing
15 with that, I would like to just make sure we understand
16 that these effluent regulations of water quality standards
17 tied together, because effluent regulations and effluent
18 limits and permits have to protect water quality
19 standards, and I think there's some misconceptions that,
20 even though there is potentially not a designated use to a
21 given, you know, water course, if you will, because I
22 think the extent that we're talking about captures all the
23 things that I would define as a stream, but permits still
24 have to, -- regardless of whether there's a designated use
25 in those water bodies, they have to protect the narrative

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1 criteria and the set of numeric criteria we have. So,
2 there is quite a bit of control over toxic, let's say,
3 that go into streams at anytime.

4 In fact, most of the toxics, if you were to
5 write a permit for discharge to a stream that doesn't have
6 a beneficial use, would end up being set the same as if it
7 had a beneficial use. So, effectively, I just want to
8 ease minds that just because there's not a beneficial use
9 assigned that there's still a substantial amount of
10 controls that were put on permit limitations to protect
11 aquatic limitations in particular.

12 With that, we will provide written comment
13 on some of the specifics with regard to that set of the
14 regulations that provide the provisions for setting permit
15 limits. There is, I think, some clarifications I think
16 we're all on the same page about. There's just a matter
17 of clarifying in the regulation and give the Department
18 the flexibilities that they need to use their professional
19 judgment in writing limits and so forth.

20 And, lastly, I strongly support -- and
21 everyone here should support -- the Department in adopting
22 the Federal provisions related to the WET test, whether
23 it's issues that face BOTWs, in particular, bypass
24 provisions, and sanitary sewer flow being handled. We
25 need to stick to the law of the land which is the Federal

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1 regulations and make sure we're consistent with that. And
2 it seems like we're getting more and more clarifications
3 as we go how to interpret those regulations.

4 So, with that, any questions.

5 CHAIRMAN PARNELL: Any questions,
6 Commissioners.

7 (No response.)

8 CHAIRMAN PARNELL: Thank you, Trent.

9 MR. STOBBER: Thank you.

10 CHAIRMAN PARNELL: Is there any more
11 commentary from the floor?

12 (No response.)

13 CHAIRMAN PARNELL: Very well. The
14 Commission will receive written testimony on these
15 proposed rule changes until 5 p.m. on September the 18th,
16 2013. You may submit this written testimony to John
17 Rustige, Missouri Department of Natural Resources, Water
18 Protection Program, P.O. Box 176, Jefferson City,
19 Missouri, prior to that deadline.

20 On behalf of the Commission, I thank
21 everyone who has participated in this process, and this
22 hearing is now closed.

23 (Whereupon, the record ended at 11:49 a.m.)

24 * * * * *

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1 C E R T I F I C A T E

2 STATE OF MISSOURI)

) ss.

3 COUNTY OF COLE)

4 I, Pamela S. Gentry, Certified Court
5 Reporter with the firm of Midwest Litigation Services, do
6 hereby certify that I was personally present at the
7 proceedings had in the above-entitled cause at the time
8 and place set forth in the caption sheet thereof; that I
9 then and there took down in Stenotype the proceedings had;
10 and that the foregoing is a full, true and correct
11 transcript of such Stenotype notes so made at such time
12 and place.

13 Given at my office in the City of
14 Jefferson, County of Cole, State of Missouri.

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Pamela S. Gentry, CCR #426

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