

Jeff Robichaud, Director
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, KS 66219

RE: Missouri Clean Water Commission Comments on Decision to Add Waters to Missouri's
2020 303(d) List

Dear Jeff Robichaud:

As the State of Missouri's primary water-quality board, the Missouri Clean Water Commission (Commission) appreciates the opportunity to comment on the recent U.S. Environmental Protection Agency (EPA) decision to add waters to Missouri's 2020 303(d) List. Thank you for extending the public comment period an additional 45 days.

The Commission is a seven-member citizen's board appointed by the Governor of Missouri and confirmed by the Missouri Senate. The Commission adopts regulations and policies to carry out planning, monitoring, permitting, enforcement, and grant-assistance activities in Missouri that implement the objectives of state and federal clean-water law. As the Commission is charged with protecting, maintaining, and improving the quality of Missouri's waters, we have a keen interest in maintaining the State's ability to set its own water-quality regulations and standards.

Likewise, the Commission has the authority to adopt the Listing Methodology Document (LMD) developed by the Department pursuant to 10 CSR 20-7.050, and approve Missouri's 2020 303(d) List pursuant to Section 644.036, RSMo. The Commission believes this authority grants us the flexibility to establish guidelines that balance protection of Missouri's waters with the Department's resources and the implications of listing decisions. Such an approach is consistent with the goals and requirements of the federal Clean Water Act and achieves water-resource protection, restoration, and enhancement in the least burdensome manner.

The Commission has directed the Department to implement a reasonable methodology to address waters where the most recent data is over seven years old. That methodology and rationale are contained in the LMD, which precludes the listing of waters as impaired based solely on data that is older than seven years, and prioritizes the collection of additional data for such waters in order to make confident impairment decisions on future lists. We believe this directive is a

sensible precaution against uncertain listings, while prudently pursuing conclusive and representative data for assessments.

The Commission requests that EPA reconsider the decision in its November 30, 2020, action to list as impaired numerous Missouri waters without recent data. Instead, EPA should assign waters lacking data within the past seven years as category 2B or 3B, if those data suggest the possibility of a current impairment. The Commission believes this is a reasonable approach that will prevent erroneously listing waters and the consequences of listing such waters.

This approach aligns with the Department's rationale regarding the age of data that specifies its commitment to collect current data for a number of lakes (see attached document "Rationale for Implementing Data Age LMD Requirements," which was included in the 2020 Integrated Report submitted to EPA). Many of the lakes listed in that rationale were targeted for sampling under the most recent cooperative agreement with the University of Missouri in calendar year 2020. Going forward, the Commission will continue to direct the Department to prioritize data collection on lakes that are suspected of impairment, in order to accurately and timely identify impairments. Information on the status of sampling efforts for these lakes can be found in Appendix 1.

In regard to the proposed listing of Lake of the Ozarks (LOTO), the Commission requests EPA categorize the water body as a 3B water body for three reasons:

1. The available fish-kill data that EPA relied upon in its decision are not appropriate for a listing decision. Fish kills used to document evidence of impairment should not rely solely on public reporting that lacks agency verification and documentation of cause. Unverified fish-kill reports do not pass the Quality Assurance/Quality Control (QA/QC) needed for use in assessments pursuant to Missouri's LMD. Of particular concern is the June 2018 fish kill that EPA used to justify designating LOTO as impaired, which was not verified by the Missouri Department of Conservation (MDC), Department staff, or any other qualified individual, and therefore does not meet the requirements of quality-assured data pursuant to the Commission's approved LMD. Additionally, the fish-kill report in question is not clear as to the cause of the event and aspects of the report appear to not meet the characteristic of eutrophication outlined in the Missouri Nutrient Criteria Implementation Plan.
2. The ecoregional assignment of LOTO as a solely Ozark Highlands Ecoregion reservoir must be reevaluated. The Department has indicated that preliminary modeling indicates Truman Reservoir, which is a Plains Ecoregion reservoir, accounts for the majority of the flow and nutrient loading in LOTO. Further evaluation and study is needed to accurately assign LOTO's ecoregional designation before an accurate listing designation is possible.

3. The socioeconomic impact of listing LOTO is significant. The combined Harry S. Truman Reservoir and LOTO system are a substantial economic and tourism driver for the State of Missouri, and an impairment listing without just cause could severely and unfairly impact the reputation of these reservoirs in the mind of the public. Additionally, an impairment decision would result in costly, unnecessary wastewater infrastructure upgrades.

For these reasons, the Commission requests that EPA defer a final decision or designate LOTO as category 3B, until such time as the Department can complete its evaluation and recommendation for the appropriate designation of the lake. A decision at this moment is not critical to the immediate ecological health of the lake.

Thank you again for the opportunity to comment on your agency's decision regarding Missouri's 303(d) list.

Respectfully,

Ashley McCarty, Chair
Missouri Clean Water Commission

c: Missouri Clean Water Commission
Chris Wieberg, Director, Water Protection Program

Appendix 1. Sampling Schedule for Lakes Identified During Assessments as Needing More Data

WBID	Water body Name	Sampled	Planned Sampling
7029	Hunnewell Lake	2019, 2020	2021-2024
7036	Shelbyville Lake	--	2021-2024
7105	Jamesport Community Lake	--	2021-2024
7112	King Lake	2020	2021-2024
7120	Cameron Lake #1	2020	2021-2024
7121	Cameron Lake #2	2020	2021-2024
7149	Sterling Price Community Lake	--	2021-2024
7173	Thomas Hill Reservoir	--	2021-2024
7208	Montrose Lake	--	2021-2024
7241	Peaceful Valley Lake	2020 - 3 samples	2021-2024
7288	Indian Lake	2020	2021-2024
7391	Jackrabbit Lake	2020	2021-2024
7015	Deer Ridge Community Lake	2019, 2020	2021-2024
7018	Lancaster City Lake - New	--	2021-2024
7061	Savannah City Reservoir	--	2021-2024
7104	Jamesport City Lake	--	2021-2024
7110	Worth County Community Lake	--	2021-2024
7111	Limpp Community State Lake	--	2021-2024
7113	King City Old Reservoir	--	2021-2024
7114	King City New Reservoir	--	2021-2024
7118	Pony Express Lake	--	2021-2024
7119	Cameron Lake #3	2020	2021-2024

WBID	Water body Name	Sampled	Planned Sampling
7143	Linneus Lake	--	2021-2024
7147	Fountain Grove Lakes	--	2021-2024
7154	Unionville Reservoir	2020	2021-2024
7159	Bucklin Lake	--	2021-2024
7160	Marceline Reservoir	--	2021-2024
7183	Peters Lake	--	2021-2024
7186	Ben Branch Lake	2020	2021-2024
7207	HS Truman Lake	2020	2021-2024
7212	Lake Winnebago	--	2021-2024
7230	Drexel City Reservoir South	2020	2021-2024
7234	Atkinson Lake	2020	2021-2024
7304	Timberline Lakes	2019	2021-2024
7333	Shepard Mountain Lake	2020	2021-2024
7378	Coot Lake	--	2021-2024
7379	Cottontail Lake	2020	2021-2024
7383	Gopher Lake	--	2021-2024
7403	Lake Nell	2020	2021-2024
7025	Edina Lake	--	2021-2024
7124	Hamilton Lake	--	2021-2024
7153	Lake Thunderhead	--	2021-2024
7365	Belcher Branch Lake	--	2021-2024