



**Water Classification Workgroup – Meeting Notes**

For August 2, 2012, 9am – 12pm

John Hoke: Provided introduction and repeated the PowerPoint presentation of proposed tiered aquatic life use (TALU) categories and conceptual, draft rule language (for those who were not present at the July 17 meeting).

Phil Walsack: Questioned how the VST stream network was determined; stated that in drought years we should expect to see dramatic changes in stream network.

Karen Bataille: Responded to Phil by pointing out that the stream channels will still exist, regardless of the presence of water.

There was a general discussion about stream mileage determination...

Question: Will class C & P go away with the new water classification rule?

John Hoke: This is still to be determined. Noted that Missouri Department of Conservation (MDC) is moving to organizing all of their aquatic data by segment ID, so the VST line work used in the new classification will be compatible.

Trent Stober: Will adopting proposed aquatic life use using VST solve the technical issues associated with using the categories of general and limited warm water fisheries?

Anna Nowack: The Department is still working on that.

Trent Stober: The current effort is a big improvement over what is currently existing in rule.

The VST database currently has flow broken down by categories of “intermittent” and “perennial”.

Ed Galbraith: How are headwaters defined in the VST database?

John Hoke: Headwaters defined not by flow, but rather by the number of channels upstream of any given channel; full explanation can be found in the metadata.

Phil Walsack: In the presentation slide titled “Tiered Aquatic Life Habitat Designated Use Framework for Missouri using MoRAP VSTs plus additional data”, what is meant by “additional data”?

Question: Why does draft rule language address “waters of the United States”?

John Hoke: To make the rule consistent with language in the federal Clean Water Act (CWA).



Bob Angelo: EPA views this language as the purview of the CWA.

Phil Walsack: Is this an EPA addition?

Bob Angelo: No, but EPA supports it.

Leslie Holloway: Both Kansas and Iowa intentionally avoid using “waters of the U.S.” in their WQS.

- Including this language may cause problems down the road.

Ed Galbraith: Would this definition assign whole body contact recreation (WBC) to wetlands?

John Hoke: Yes, but it is no different than other states with a similar rule.

Bob Angelo: This is a rebuttable presumption which can be addressed through the Use Attainability Analysis (UAA) process.

- EPA understands peoples’ concerns with this language, but it is consistent with the Clean Water Act
- Including this language keeps EPA from having to continually ride the state to keep adding more waters to the list of waters with designated uses.

Phil Walsack: The definition of “waters of the U.S.” will ultimately be decided by the courts.

Bob Angelo: This draft rule language is explicit in applying the requirements of the CWA.

Ed Galbraith/Phil Walsack: Would rather not use “waters of the U.S.” language; why not stick with using permanent flow and permanent pools?

Bob Angelo: Focusing on permanent flow and pools falls short – only addresses a subset of waters.

- Until Missouri’s WQS apply protection to all waters of the U.S. to the state, EPA will continue to have concerns.

Peter Goode: Although it may not be perfect, this draft language satisfies many of his client’s concerns – they are not getting all that they want, but see this language as a good compromise position.

Bob Angelo: Of all states, no state applies CWA protections to fewer waters than Missouri.

Michael Bollinger: Agrees that this draft language is a reasonable compromise and would like to move forward.



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Trent Stober: This rule applies uses to wetlands that are not appropriate and which may result in unintended consequences – it may provide a disincentive for farmers to protect wetlands.

Bob Angelo: If a wetland is not jurisdictional, it will not be designated for uses.

John Hoke: The Department welcomes such comments during the public comment period.

Kristol Whatley: Our goal seems to have shifted from protecting 1:100K waters to protecting waters of the U.S.

- What is the jurisdictional basis for including waters adjacent to the state?

Phil Walsack: Is the GAP project subject to continued revision, and does this set us up for future problems?

- Would like to see more clarification in Section (2)(D)(1) about what additional data is included.

Trent Stober: How is “sufficient and reliable” defined?

John Hoke: It is defined in another part of the rule.

Ed Galbraith: Would rule language specify when a UAA is needed?

John Hoke: We need to start working on UAA protocol, which will be incorporated in the rule by reference.

John Loderhose: Will there be language in the rule to exclude treatment processes, stormwater conveyances, etc.?

John Hoke: Yes.

Mary West: Is there a way to capture how many facilities will need to upgrade, with the Regulatory Impact Report (RIR)?

John Hoke/Phil Walsack: This rule should not affect existing TMDLs.

- The RIR public comment period will be 60 days.

Phil Walsack: Department needs to make sure all costs are included in the RIR.

John Hoke: The Department would like the August 30 meeting to be a technical subcommittee meeting to address TALU protocol.



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Ed Galbraith: Before the next meeting can we put together a set of other states' TALU frameworks to provide a starting point?

John Hoke: Wants to have substantially complete draft of protocol before the rule goes out on public notice in December.

Chris Zell: Developing a decision tree is one of the more important steps in the process of developing TALU.