



Water Classification Workgroup – Meeting Notes

For December 18, 2012, 9 am – 12 pm

John Hoke: Introduced RIR – close of comment period is January 22, 2013 at 5 pm.

- Originally hoped to discuss UAA & TALU
- Stakeholder consensus needed before devoting considerable amount of staff time to rulemaking changes.
- Consensus on how to move forward?
- Listening mode – concerns?

Leanne Tippett Mosby: As DEQ Director it is incumbent upon me to understand the issues and sign-off on it.

Phil Walsack: Elaborate on the transitions in Department.

Trent Stober: Would make sense to walk through the rule and look at how things have changed.

Phil Walsack: Is prepared to engage in debate on rule.

John Hoke: There is a rule currently on public notice.

Robert Brundage: How did so many things get dropped off?

John Hoke: This rule addresses disapprovals and other things to be clarified.

Phil Walsack: Let's focus on rule, RIR later.

Group walks through rule, part-by-part.

Leslie Holloway: In previous rule, the Department was not proposing changes to the aquatic life use designations. What changed?

John Hoke: This is a new rulemaking, addressing current concerns for need of revised aquatic life use protections.

Trent Stober: Thinks the change to aquatic life use is one of the best parts of the rule. How would the aquatic life use designations link to biocriteria?

John Hoke: Thinks the language linking to biocriteria is better in a procedural document referenced in the rule, rather than in the rule itself.

Chris Zell: Will all the new water bodies be listed in a table?

John Hoke: Listing all water bodies is too cumbersome. The idea is to have it in a GIS database.

Lorin Crandall: A database everyone can access?

John Hoke: Yes.



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Chris Zell: If we do go that route, how are updates handled?

John Hoke: Updates would be available through MSDIS.

Chris Zell: So, the idea is to have Clean Water Commission approve a geospatial database?

John Hoke: The tables in rule were for specific cases, not every water body.

Ed Galbraith: Where does the geodatabase fit in the rulemaking process? I would like commitment from the Department that all stakeholders will have adequate time to review.

John Hoke: Can be flexible. If we devote staff time, would be May or early summer.

Karen Bataille: Will be able to tweak database based on future data collected?

John Hoke: Yes.

Lorin Crandall: Would changes made need to wait to be approved until next rulemaking?

John Hoke: Would like to be flexible, find a way to bring these issues to Clean Water Commission without waiting for the next Triennial Review. The changes would not reopen the rule, but reopen the database referenced in rule.

Peter Goode: “No Waters of the U.S.” in rule?

Lorin Crandall: Filed intent to sue because “waters of the U.S.” was removed from rule. Was this because of same group of stakeholders that wanted nutrient rule pulled?

Leanne Tippet Mosby: I pulled the nutrient rule. It is still unclear what “waters of the U.S.” means, so using it is not a simple answer. It is still a process to get jurisdictional designation.

Ed Galbraith: Do we all agree that we want streamlined procedures to have uses added and removed?

Phil Walsack: Is it true that the enhanced 1:100K cover every municipal discharger in the state?

John Hoke: Yes.

Phil Walsack: I am all in on the 1:100K.

Lorin Crandall: Missouri Coalition for the Environment wants protection to extend beyond point source dischargers. Why would you not want a rule that addresses nonpoint source?

Jan Millington: I understand, but we can't have it all. Let's work together and start somewhere.

Lorin Crandall: This rule would not address current problems with unclassified waters.

Trent Stober: Would like to see rule address man-made storm-water conveyances.



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Lorin Crandall: How do we know where modified aquatic habitat end and storm-water conveyances begin?

Robert Brundage: Concerned with Leanne's comment that database is more than just 1:100K.

Leanne Tippett Mosby: The 1:100K Plus is a good approximation of "Waters of the U.S."

Robert Brundage: Is concerned that this amounts to adding waters without a process.

Karen Bataille: Shouldn't there be more of a burden to remove than to add?

Robert Brundage: Not necessarily.

John Hoke: Perennial and intermittent streams already in rule, this proposed rule applies these same protections to 1:100K.

Peter Goode: We see this as an opportunity to get as much as the law allows. This is why we filed the petition.

Leanne Tippett Mosby: Everyone will have an opportunity to comment on this before the Clean Water Commission.

John Hoke: The proposed rule also addresses wetlands.

Chris Zell: I thought we were going to specify a technical wetland group. Is the proposed rule a result of this?

John Hoke: No. Commissioner Warren wanted wetlands addressed in the proposed rule.

Leslie Holloway: Doesn't want to see the last sentence, "Class W determinations on any specific site shall be consistent with federal law" removed. Why was it removed?

Leanne Tippett Mosby: Anyone else concerned about that? (No answers)

Lorin Crandall: Will the Department put more resources toward wetlands?

Trent Stober: I would like to see other examples added to the list of artificially created wetlands that won't get Class W determination.

Ed Galbraith: I would like to see variance language put back in.

John Hoke: Stakeholders didn't like it, so we removed it.

Phil Walsack: I want Missouri to handle its own variances, not the federal government.

John Hoke: Am I hearing that people want variances put back in?

Phil Walsack: If the state says they can't afford to handle variances, I'm ok with it. But I want to know why it was pulled off the table.



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John Hoke: We used federal and other state guidance and stakeholders didn't like it, so we pulled it. Variance language is not in the proposed rule now because the current rule is intended to address EPA disapprovals from previous rule.

Trent Stober: Putting the variance language back in rule would not affect the RIR.

Phil Walsack: Don't really have a model for assessing potential costs of variance rule.

Jan Millington: Why is swimmable use assigned to wetlands?

(2) Designated Uses

Phil Walsack: Need to define "enhanced" in rule.

John Hoke: Agreed.

Trent Stober: Why use "spatially connected to"? It could imply nexus with upstream waters.

Ed Galbraith: Need clarification on the "spatially connected to" language.

Phil Walsack: Should we replace this with language that was originally used?

Ed Galbraith: No. Define, "on ramp" process. Wants rule to reflect that a process will be developed.

Lorin Crandall: Workgroup should bring examples to discuss; waters to protect, waters to remove.

Ed Galbraith: I want the test for adding a use just as well laid-out as for removing uses.

Lorin Crandall: I disagree. Resources are not proportionate.

Phil Walsack: (G) Schedule of compliance language not needed.

John Hoke: I agree. It could be removed. May be redundant?

Phil Walsack: Would be helpful to have schedule of compliance language that is consistent with effluent regulations. At next Clean Water Commission meeting, will John Hoke share these comments? Will the Department respond to received comments before the meeting?

John Hoke: It is the intention to have public comments and responses by the April commission meeting. We can commit to coming up with a revised schedule to more accurately reflect what we think is doable. The current schedule for responding to comments and filing with JCAR is not feasible.

Leanne Tippett Mosby: John Madras, will give update at next commission meeting about where we are in the rulemaking.

Leslie Holloway: I'm under the impression we would not address wetland criteria in this rulemaking.



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John Hoke: This is commission directive form Commissioner Warren.

Ed Galbraith: I don't think Commissioner Warren's directive is that strong.

Chris Zell: I thought the goal was to address wetlands at some point after water classification was addressed.

Leanne Tippett Mosby: There will be an opportunity to get clarification at the January meeting.

Trent Stober: Not sure some wetland criteria are appropriate (bacteria, NH3).

Peter Goode: Other states do have criteria. NE is an example?

Karen Bataille: Need to be cautious about criteria we apply to wetlands.

Trent Stober: Wetlands would always fail bacteria criteria of 126.

Lorin Crandall: I suggest getting wetlands workgroup together to address issues.

Group discussion on the RIR and how the numbers were calculated.

Peter Goode: RIR question – Why did we use the model we used? Can we get a primer on how the model works from someone in the Department?

Charlie Stevens: Page 7 of the RIR – Have considered impact of total N removal? Concerned about this may be future issue for facilities now upgrading to meet NH3.

John Hoke: We did not, since we do not have nutrient criteria in the proposed rule.

Trent Stober: Some numbers in the RIR are funky.

John Hoke: We're using same protocol as for affordability. Is it not good enough?

Phil Walsack: Show us how it works. One problem with the RIR is that we have no money to monitor success or failure.

Leslie Holloway: RIR references draft guidance document (*Draft Guidance on Identifying Waters Protected by the Clean Water Act*, EPA), suggest this not be used.

John Hoke: What I hear is that folks are comfortable with moving forward with a UAA protocol and TALU.