



# Determination Regarding Applicability of Presumptive Beneficial Uses

Review and final determinations for the Doe Run/Viburnum Operations facility as requested by Missouri Department of Natural Resources Operating Permits Section on April 8, 2019.

## **Purpose**

The Missouri Department of Natural Resources is providing this determination in response to an internal request submitted by Tim Bull of the Department's Water Protection Program – Operating Permits Section. The submittal requested that the Watershed Protection Section (WPS) examine the applicability of presumptive beneficial uses for the tributary to Indian Creek water body identification number (WBID) 3960, which begins upstream of the Viburnum Wastewater Treatment Facility (WWTF) (Missouri State Operating Permit MO-0055751) and ends at the WWTF's outfall. This segment of the tributary with presumptive beneficial uses is part of the Missouri Use Designation Dataset (MUDD), but is disconnected from other MUDD waters. Downstream of this segment, the National Hydrography Dataset (NHD) flowline for this tributary runs through manmade tailings ponds associated with the Doe Run/Viburnum Operations facility (MO-0000086). Once downstream of these tailings ponds, this tributary to Indian Creek regains presumptive beneficial uses as a WBID 3960 before flowing into Indian Creek (WBID 3960). The Operating Permits Section requested the WPS examine and remove, as appropriate, presumptive beneficial uses designated to this water body as a result of the 2014 Water Quality Standards (WQS) rule.

This document is intended to communicate the process and supporting information used to determine the removal or retention of presumptive beneficial uses of surface water features. The information in this document will also be included in a future, proposed amendment to 10 CSR 20-7.031, which will be submitted to the U.S. Environmental Protection Agency (EPA), to communicate revisions to the MUDD. Consequently, any proposed revisions to the MUDD are not effective for federal Clean Water Act purposes until the proposed amendment is accepted by the Missouri Clean Water Commission and approved by the EPA.

## **Regulatory Responsibilities**

The Missouri Clean Water Law<sup>1</sup> and Missouri's WQS regulation<sup>2</sup> describe actions the Department is required to take in response to petitions requesting examination of the applicability of presumptive beneficial uses for surface water features. In addition, the federal Clean Water Act<sup>3</sup> requires the Department to modify or adopt standards, when applicable, as part of a triennial review of Missouri's WQS.

Specifically, Missouri's WQS require the Department to make a written determination regarding the applicability of presumptive beneficial use protections under Missouri Clean Water Law after it receives a request containing reasonable evidence to review if a surface water feature can support its presumptive beneficial uses. The Department will propose applicable revisions to the MUDD in the first available triennial review following a written determination.

Missouri's WQS regulation provides the basis the Department uses to determine which surface water features receive presumptive beneficial uses and are included in the MUDD. According to

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<sup>1</sup> Missouri Clean Water Law, <http://revisor.mo.gov/main/ViewChapter.aspx?chapter=644>

<sup>2</sup> 10 CSR 20-7.031 Water Quality Standards, <https://s1.sos.mo.gov/cmsimages/adrules/csr/current/10csr/10c20-7a.pdf>

<sup>3</sup> Clean Water Act, <https://www.govinfo.gov/content/pkg/USCODE-2017-title33/html/USCODE-2017-title33-chap26.htm>

rule at 10 CSR 20-7.031(2)(A), the following surface water features are designated with presumptive beneficial uses as defined in regulation:

1. All perennial rivers and streams;
2. All streams with permanent pools;
3. All rivers and streams included within the 1:100,000 scale National Hydrography Dataset (1:100K NHD) described at 10 CSR 20-7.031(1)(S); and
4. All lakes and reservoirs that intersect the flow lines of rivers and streams identified in 1 through 3 above.

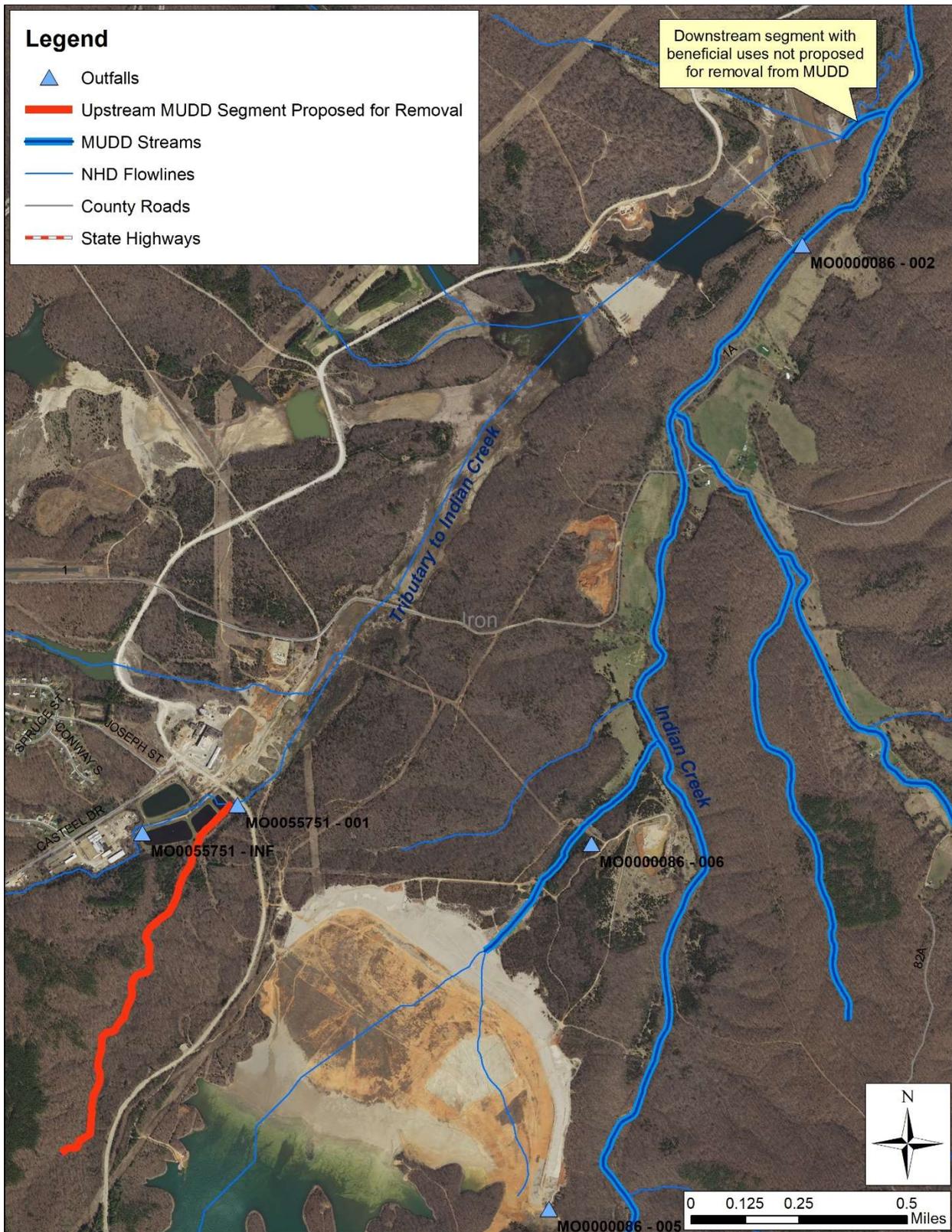
The Department may propose the removal of presumptive beneficial uses and removal from the MUDD for certain surface water features if reasonable evidence indicates that any of the criteria outlined at 10 CSR 20-7.031(2)(D)3. are met –

*3. Assuming reasonable evidence, presumptive beneficial use protections described above shall not apply to water bodies without designated uses pursuant to Tables G or H prior to November 6, 2013 that meet one of the following criteria:*

- A. Waste treatment systems, or prior converted cropland, which are excluded from the federal definition of “waters of the United States” under 40 CFR 122.2; or*
- B. Man-made structures which were constructed solely to treat or convey wastewater; or*
- C. Man-made bodies of water or structures which lack perennial flow and were constructed to treat, convey, or temporarily hold or slow stormwater following precipitation events (this may include certain structures associated with Best Management Practices such as sediment basins, wet and dry detention basins, bioretention basins, rain gardens, bioswales, etc.); or*
- D. Water bodies that lack jurisdiction under the federal Clean Water Act or Missouri Clean Water Law.*

## **Review**

At the request of the Operating Permits Section, the WPS reviewed the tributary to Indian Creek (WBID 3960) to determine if the water feature supports its presumptive beneficial uses and meets the removal criteria at (2)(D)3.D. Satellite imagery of the site and parcel data were used as sources of information and evidence to form the basis of the review for the tributary to Indian Creek.



**Fig. 1. Map of the tributary to Indian Creek, showing the upstream and downstream MUDD segments with presumptive beneficial uses.**

## **Findings**

The isolated MUDD segment of the tributary to Indian Creek that begins upstream of the Viburnum WWTF and ends at the WWTF's outfall was reviewed using aerial imagery and parcel information. The Department concluded that the segment lacks jurisdiction under the Missouri Clean Water Law. Under Missouri Clean Water Law, jurisdictional Waters of the State are defined as waters not entirely confined and located completely upon lands owned by one landowner. Due to the fact that this segment is entirely located upon land owned by Doe Run and disconnected from other water bodies, this segment is not a Waters of the State and meets the exemptions found in state regulation at 10 CSR 20-7.031(2)(D)3.D. Presumptive beneficial uses will be removed for this segment. The downstream MUDD segment of the tributary to Indian Creek flows in to Indian Creek and should retain its presumptive beneficial uses.

## **Determinations**

The WPS' determinations are as follows:

Per 10 CSR 20-7.031(2)(D)3.D., remove the segment of the tributary to Indian Creek with presumptive beneficial uses, presented as 8-20-13 MUDD V1.0 (WBID 3960):

- Remove the stream feature in the MUDD and its 1.0 miles that is part of the listing named "8-20-13 MUDD V1.0" in Table H.
- Reachcode – 07140102001157

Retain the segment of the tributary to Indian Creek with presumptive beneficial uses, presented as 8-20-13 MUDD V1.0 (WBID 3960):

- Retain the stream feature in the MUDD and its 0.1 miles that is part of the listing named "8-20-13 MUDD V1.0" in Table H.
- Reachcode – 07140102002704

If you were adversely affected by this decision, you may be entitled to pursue an appeal before the administrative hearing commission pursuant to Section 621.250, RSMo. To appeal, you must file a petition with the administrative hearing commission within thirty days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the administrative hearing commission.

Those interested in the spatial data or other information used in this review may request a copy of the administrative record by contacting the Department of Natural Resources, Water Protection Program, Attn: WQS Coordinator, P.O. Box 176, Jefferson City, MO 65102 or by email at [wqs@dnr.mo.gov](mailto:wqs@dnr.mo.gov). This information is also available upon request under Missouri's Sunshine Law. Any request for information will be processed in accordance with Missouri's Sunshine Law (Chapter 610, RSMo) and the Department's administrative policies and procedures governing Sunshine Law requests. To submit a request, or to learn more about open record/Sunshine requests, please consult the Department's website at [dnr.mo.gov/sunshinerequests.htm](http://dnr.mo.gov/sunshinerequests.htm).

**Date Completed:** June 13, 2019

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