



## **Water Classification Workgroup – Meeting #2**

June 7, 2012, 9:00am-12:00pm

John Hoke: Introductions

- One of the questions we've been tasked with answering is applying rebuttable presumption to waters of the U.S. in the state of Missouri – Bob Angelo can offer a unique perspective on this.
- Goal of this process is to develop a water classification framework that works for the state of Missouri that satisfies the rebuttable presumption and satisfies federal requirement to apply those uses to waters of the U.S.

Bob Angelo: “Waters of the U.S.” presentation

- See presentation posted on Water Classification Workgroup page on MDNR website:  
<http://www.dnr.mo.gov/env/wpp/cwforum/adv-uncl-waters-wetlands.htm>

Lorin Crandall: what about jurisdiction of playa lakes?

Bob Angelo: Since SWANCC decision, Army Corps of Engineers (Corps) does not claim jurisdiction over these.

Lorin Crandall: Does EPA have preference over using site-specific information vs. using map of jurisdictional waters?

Bob Angelo: EPA prefers an approach using a comprehensive list along with UAAs.

Matt Combes: Presentation on presence of aquatic life in headwater streams

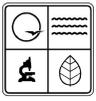
- See presentation posted on Water Classification Workgroup page on MDNR website:  
<http://www.dnr.mo.gov/env/wpp/cwforum/adv-uncl-waters-wetlands.htm>
- Take-home message of presentation is that there are fish and other aquatic life in many small headwater streams in Missouri
- Robert Brundage: What was timing of sampling?
- Matt Combes: June 1 – September 15
- Question: Did MDC come up with controlling factor to explain presence of fish?
- Matt Combes: No, not really.

Lorin Crandall: Is there a nexus between constructed impoundments and traditional navigable waters?

Chris Zell: Does definition of general warm water fishery satisfy the rebuttable presumption? If so, do we think that waters captured with the expansion of classified waters meet the definition of GWWF?

Leslie Holloway: We need to understand how different terms used by MDC and MDNR are consistent or different in definition (i.e., “community”).

Bob Angelo: Agrees that definitions are important and clarity essential.



Lorin Crandall: Need discussion of how permits handled that discharge to unclassified waters.

John Hoke: Kansas has default use protection to waters downstream of point source dischargers.

Bob Angelo: Missouri does not need to limit itself to 1:100K – 1:100K would be a good starting point for identifying waters of the U.S. (including wetlands).

Ed Galbraith: “Waters of the U.S.” test is more hydrologically-based – is not based on the presence of aquatic life.

- This is a tiered aquatic life use issue.

Bob Angelo: In 404 permitting, ecological factors must be considered on equal footing with hydrology.

Ed Galbraith: But when considering general presumed uses – should this be only hydrology-based?

Bob Angelo: In Kansas monitoring in eastern part of the state – more waters that could be considered waters of the U.S, based on flow, than were found on the NHD+.

- Suggest starting with 1:100K, then provide on-/off-ramps.

Peter Goode: Reminder that permanent flow not necessary for aquatic life

- In the past, the on-ramp has been unduly difficult and burdensome.

Ed Galbraith: There is agreement that all parties are concerned with the issue of on-/off-ramps.

Lorin Crandall: Just because there is no aquatic life present doesn't mean it is not impacted by point source pollution

Bob Angelo: Brought up issue of existing and attainable uses.

Lorin Crandall: Is there a requirement that UAAs be redone every three years?

Bob Angelo: There is a required triennial review of water quality standards, but not necessary to redo UAAs unless there is a compelling reason to do so.

Lorin Crandall: Missouri Coalition for the Environment had commented that the previous proposed rule did not satisfy 101(a) uses. In that case – is EPA still legally responsible for such a rule? (mentioned potential for a lawsuit over this issue).

John Hoke: Ed is correct that we need to consider presumed uses

- Hydrology at 1:100K scale important
- Aquatic life at 1:24K also important
- So, where to start is the issue...

Lorin Crandall: Is the Department's goal to make progress on the issue, or satisfy 101(a)2 completely?



John Hoke: The Department understands the need to address wetlands.

Lorin Crandall: Not convinced that once 1:100K established the Department will keep making progress to 1:24K.

John Hoke: If the Department was not committed to making progress, would not be engaged in this process.

- We need to have a system in place.
- We need to address tiered aquatic life use.
- We need to address on-/off-ramps
- Would like draft rule to address:
  - Wetlands
  - UAAs
  - Exemptions

John Hoke: We don't want site-specific exceptions to drive the rule.

Ed Galbraith: Agrees that we need to move to the next step using the information we have.

Lorin Crandall: Disagrees – does not want to rush into a rule that won't work.

Ed Galbraith: All sides want a process that works for everyone.

Bob Angelo: May be helpful if rule language acknowledges that classified waters may only represent the “tip of the iceberg” of waters of the U.S.

Chris Zell: Need to get use classifications right – how can John Ford's assessment of biomonitoring data play into this?

John Ford: There is a lot of data available to start looking at tiered aquatic life use.

John Hoke: Discuss current use classification at next meeting; others can bring their own ideas of what to discuss.

Lorin Crandall: National Wetlands Inventory is outdated, and should be updated.

- Rule should have language defining wetlands similar to Corps.
- Rule should include default wetland protection.

Peter Goode: Reiterated the current wetland language in the rule.

Ed Galbraith: Can we have a group working on wetland rule language?

John Hoke: There is interest in including wetlands in this rule – so that should be one of our goals.



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John Hoke: Details will be critical to a robust rule.

Lorin Crandall: Should rule provide default protections for farm ponds?

- Wants to make sure rule has a workable on-ramp.

Group: Can we refine the schedule and technical subcommittees?

John Hoke: Yes, let's move forward with technical subcommittees on wetlands and UAAs/tired aquatic life – put out a call for interest in subcommittees.

Lorin Crandall: Might be interesting to get the Corps perspective – can we get someone from the Corps to present at a future meeting?

**Next meeting:**

- Discuss current use classification.
- Chris Zell will present on how other states are handling the use classification issue.
- Peter Goode will present on wetlands water quality standards.