



Missoula City-County Health Department

WATER QUALITY ADVISORY COUNCIL

301 West Alder Street | Missoula MT 59802-4123

www.missoulacounty.us/wqac

Phone | 406.258.4890

Fax | 406.258.4781

**WATER QUALITY ADVISORY COUNCIL
MEETING MINUTES**

**Tuesday, January 8, 2019, 2018 at 7:00 pm
Health Board Conference Room #210 (Second Floor)
Missoula City-County Health Department—301 West Alder**

Present: Peter Bierbach, Bruce Sims, Ian Magruder, Don Latham, Beverly Young, Lauren Sullivan, Lindsay Wancour, Kali Becher, John DeArment, Todd Seib, Travis Ross, Casey Ryan, Rob Rich, Cat Weichman, Kim Bray, Shannon Therriault, Patrick Doyle, Heather McAdams, Jed Whiteley, Gary Frank, Beth Covet, Will McDowell, Vicki Watson

Notetaker: Todd Seib

Agenda Items

- 1. Review Action Items from last meeting**
- 2. Miller Creek restoration analysis – Jed Whitely, Clark Fork Coalition**
- 3. 2015 Clean Water Rule and associated definitions of “Waters of the US”**
- 4. Jacob’s Island kiosk content update**
- 5. Public comment on items not included on this agenda**
- 6. Adjourn**

Meeting Notes

- 1. Review of action items:** Travis is getting some flood photos to Bruce and we have till Feb 8th if anyone has comments on DEQ 7 changes.
- 2. Miller Cr. – Jed:** Presentation highlights: Area is growing, projected to have 3,500 more people moving in in the next 10 yrs (Miller Cr watershed is 48 sq miles). City has acquired three large PWS wells to feed this development at the Bitterroot confluence area. Main findings of the assessment were that lower reaches are worse off than higher ones – basically the lower reach is one big riffle, straightened and without riparian vegetation. High water temps in lower reaches and area goes dry in September. Oxbow cattle is the only irrigator, has 10 cfs and flood irrigates. But higher reaches are nice, 50F water all summer. There is interest in understanding the extent of that colder water. Landowners vary along the creek and some are not willing to allow access. One recommendation is to continue to improve and enhance habitat in those

good temp reaches (upper and middle) and work on sediment reduction. There are some pure strain cutthroat populations in tributaries, so repairing fish barriers and potentially establishing connectivity with Bitterroot could be important. Other side of dewatering is that non-natives may stay isolated and it can be OK for the cutthroat as long as it is connected when they need to be in the spring/early summer. Where is water going? One thought is subdivision irrigation is impacting water levels in lower reaches. Growth policy density is 1 per 5 acres until it gets to 80% buildout then it will go to a higher density, so dewatering is likely to only get worse. One good thing is the Oxbow Cattle Co. is in a conservation easement. Some other priorities include addressing channel incision and improving riparian health. CFC has a Bitterroot strategy, removed a bunch of roads on Lolo cr, has water rights on O'Brien cr., so this creek is their next big focus. There are 3 or 4 county parks on Miller cr, single tree lane. Since the WQD wrote the Miller Cr WRP, it has potential for 319 funding. **Future agenda item - WQD presentation on Miller WRP.**

- 3. Waters of the US – Ian:** The water quality board would like the council's comments on local impacts of this rule change. As a council we could also comment directly to the EPA on the rule change. As background, the CWA defines "waters of the US". The definition is applied in permitting for discharge (in MT it would be the MPDES permits) and other wetland permitting/activity. Applying this definition has classically been muddled and frustrating in terms of what waters it applied to, mainly navigable rivers and streams and oceans. This rule proposal will weaken EPA jurisdiction. The last rule change was in 2015 but even that wasn't super clear.

Discussion commenced as the group tried to speculate how this would change water protection and permitting in MT and locally in Missoula. It was mentioned that interpretations made by other circuit courts recognizing surface and groundwater connections as part of the 2015 definition isn't actually in effect in Montana. This rule change has the potential to affect water quality permitting (MPDES permits administered by the state). For reference the main statutes and rules in MT that correspond to this are the WQA of Montana (MCA 75-5) and the corresponding ARM Chapter 17.30. However we still have rules that require discharges to meet non-degradation. Probably will affect dredging and FWP 124 and 310 (bed and bank) permits and 404 (Army Corp) permits the most. Rulings have made it hard to apply and permitting on certain wetlands seems to depend on who you talk to and inconsistencies exist within the Army Corp in how they apply their jurisdiction.

Some voices expressed re-releasing our past comments from the 2011 and 2014 clean water rule since those represent our current opinion and have a second letter opposing the change that we send to the EPA. Some felt we should write new comments that focus on what kind of rule making we would support, like that based on science, etc. Some feel this rule change is more of a political issue and not a technical issue for us to weigh in on. If we focus on the board letter stating impacts to local rules and local effects, group acknowledged we might not be the experts in water law to do this. DEQ is expert on how this would affect the state with these changes to the clean water rule. Montana has primacy over the CWA and has the Montana Water Quality act (MCA 75-5). It was suggested that this change might not change discharge permits in the state but no state law that is an equivalent of 404 that we know of that would protect an isolated wetland. The letter could acknowledge that the rule change will transfer

control of the disconnected water ways from feds to states and we still have good state laws in place for the most part. Group landed on having Ian write a new letter that explained our opposition and the local implications with the caveat that we are not experts on all of the local impacts of the law. **Action item– letter for this Thur (10th).**

4. **Kiosk updates:** Content should be ready in 2 wks on Rattlesnake dam and Vicki took another crack at pulp mill text and read it to us.
5. **Public Comment** - Vicki Watson: encouraged group to take survey at tinyurl.com/CentralClarkForkWRP

If you need special assistance to attend this meeting, please contact:
Emily Larson, Program Support Specialist
Missoula Valley Water Quality District
Missoula City-County Health Department
301 W. Alder, Missoula, MT 59802
Phone: 406-258-4890
Email: waterquality@missoulacounty.us