



---

March 22, 2021

Jeff Robichaud  
Water, Wetlands, and Pesticides Division  
US EPA Region 7  
11201 Renner Boulevard  
Lenexa, KS 66219

RE: EPA Proposed Decision on Missouri's 2020 303(d) List

Dear Mr. Robichaud:

On behalf of the Missouri Corn Growers Association (MCGA) and the Missouri Soybean Association (MSA) we would like to thank you for the opportunity to provide comments on U.S. Environmental Protection Agency (EPA) proposed decision on Missouri's 2020 303(d) List of Impaired Waters (hereinafter called the 2020 303d list). In addition to our comments, MSA and MCGA also fully supports comments submitted by the Missouri Department of Natural Resources (Department) and the Missouri Clean Water Commission (CWC).

For over 50 years, MCGA and MSA has worked with several generations of crop farmers to achieve major milestones and advances in Missouri's agriculture industry. As grassroots organizations, MCGA & MSA invests considerable time and resources in supporting and promoting policies, education and research that is advancing crop production, sustaining grower profitability and improving environmental stewardship. MCGA and MSA are committed to working with both our growers and governmental partners in developing policies, practices and technology that benefit Missouri farmers and their local communities.

MCGA and MSA purposely engaged on Missouri's lake numeric nutrient criteria (Lake NNC) rule at a very early stage. Contributing technical expertise and suggestions on policy development, our staff participated on stakeholder committees and met directly with Department and EPA staff, voicing our positions, providing farmer perspectives, and contributing to the rule's content and eventual adoption. We, along with many other agriculture, industry and municipal stakeholder groups, understood the importance of getting the Lake NNC rule developed right for Missouri, and more importantly, understood the potential unintended consequences of getting it wrong. After all, farmers, their families, and the communities in which they live and work, would ultimately bear much of its cost.

To that end, MSA and MCGA recognize the tremendous effort and the extensive amount of time and stakeholder engagement that the Department and EPA invested in both Missouri's Lake NNC rule as well as development of Missouri's 2020 303d List. The 2020 303d list is a significant milestone and precedent-setting and we appreciate the leadership shown by Department staff on it over the last 24 months. The Department has followed a scientifically sound and defensible path to accomplish the goal of developing the Missouri 2020 303d list, the first listing developed under the Department's recently adopted Lake NNC rule.

**General Background:**

The US Clean Water Act sets forth a required water quality assessment process that States undertake every two years. As corresponding sound evidence and science supports, States add and remove waterbodies from the

States' list of impaired waters once every two years. This process is intended to follow a two-year cycle assessment process. On November 30, 2020, EPA Region 7 issued a "proposed decision", an action that proposes to add 40 new water bodies (all lakes) as "impaired" for nutrients onto Missouri's 2020 303d List. EPA proposed this action approximately nine months after the Department and the CWC finalized Missouri's 2020 listing decisions in April of that same year.

Upon reviewing EPA's proposed decision, we respectfully request that EPA reconsider its proposed listing decision and follow the recommendations provided in the Department's comments. We view EPA's decision to "over-list" the State of Missouri on its 303d list as unusual, if not unprecedented, and seems contrary to Clean Water Act goals for cooperative federalism. We are unaware of a previous time when EPA listed new waterbodies as impaired after the Department finalized the State's list.

Within the Clean Water Act's federalism approach, Congress emphasized and gave states primary responsibility for developing and adopting water quality standards and assessing state waters. Given that state agencies are also primarily responsible for implementing standards and developing corrective actions, it is self-evident that states should also be given broad discretion and decision-making authority when implementing water quality standards. States have the firsthand knowledge of how to get complex regulations implemented and on the ground successfully; they also know how to reduce unnecessary costs and regulatory impacts, and how best to work with stakeholders, the regulated community, and communities being impacted.

States have a finite amount of resources to implement, identify, and address impairments, therefore the criteria, the assessment process, and impairment decisions must accomplish goals efficiently as well as cost-effectively, and it must seek to minimize unintended impacts. In other words, applied to the 2020 303d List, it must reliably and accurately identify only the lakes that are truly not meeting designated uses. Assessments and impairment decisions that create false positives would consume State and permittee resources unnecessarily and potentially cause reckless harm to the state's economy.

In view of Clean Water Act's federalism goals and EPA's own recognition of the importance of state-led solutions to nutrient pollution, **we strongly encourage that EPA fully consider Department's comments and revise the EPA's proposed decision accordingly.** In addition, we ask that you consider our comments below.

### **Specific Comments:**

We ask for EPA to be more accommodating in this first Lake NNC listing decision - This is the first 303d list developed under the State's recently adopted lake numeric nutrient criteria (Lake NNC). Because of this, impairment decisions, as well as the steps and protocol taken by both Department and EPA will be precedent-setting. We ask that EPA provide Department additional flexibility and ask that EPA honor and adhere to the State's Water Quality Standards (WQS) and Listing Methodology Document (LMD) when reviewing Missouri's 2020 303d list.

We ask that EPA honor Missouri Clean Water Commission policy on data age; a policy that helps ensure sound scientific decisions. - Flexibility is needed in 303d listing decisions to ensure that sound scientific decisions are being made. Missouri does not ignore data based on an age cutoff. According to the LMD, the Department can and did rely on data older than seven years in developing the 2020 303(d) List, and considered that data either together with newer available data or otherwise in absence of newer data. For water bodies where the only data indicating potential impairment was older than seven years, the Department deferred its impairment determination to allow collection and evaluation of additional data that would be more likely representative of current conditions in the water body. Rather than ignoring the older data, the Department utilizes the data age

policy to prioritize and focus additional resources and evaluation that ensures scientifically sound and fully informed impairment determinations.

Having recent high-quality data for listing decisions is imperative to ensuring sound and scientific decisions are being made. If older data alone suggests a water body could be impaired but lacks more recent supporting data, we support the Department's recommendation that the water body be assigned attainment category 2B or 3B rather than being placed on the 303d list. This is a move which will allow time for the state to collect additional data to confirm whether 303d listing is truly warranted.

EPA should honor and abide by clear listing and data cutoff dates set by the state - The 303d assessment cycle is intended to be a two-year cycle process. However, EPA included and based some of their decisions on data that became available well after the Department finished their 2020 water quality assessment. A two-year cycle is not really a cycle if there is no clear cut off date for data being enforced. If EPA intends to bring new data into an assessment decision at any point in time, then there is no justifiable reason for following the CWA's two-year assessment cycle for the 303d list. Put simply, not abiding by cut off dates undermines the process.

More importantly, setting a cut-off date is important to ensure only quality and fully vetted data is relied upon. By not abiding by a clear cut-off date, data is likely to be rushed into the assessment and decision process without proper data quality controls. We believe that some of the data EPA allowed in after the Department's cut-off date, and relied upon for its decision-making process, resulted in flawed decision making.

Lake of the Ozarks should not have been listed by EPA - The Department had strong sound reasoning for not listing the Lake of the Ozarks as an impaired waterbody. We trust the State to protect water quality and we believe EPA should not have overruled the Department on this issue.

This decision in particular brings with it the potential for grave economic consequences for the entire state, not to mention the Lake of the Ozark region. This is because of the Lake's large and important contribution to the state's economy through tourism. The Lake also has a direct impact on the local economy, including its public schools and other entities that rely on its strong tax base and economic drivers.

Lake of the Ozarks is both ecologically important and recreationally significant to Lake area residents, businesses, public schools, and the entire state. According to the Missouri Department of Economic Development (DED), total tourism spending in the central Missouri region, which is dominated by the tourism draw of Lake of the Ozarks, is over \$1.2 billion annually. That economic impact is irrefutably linked to water tourism and by extension the perception of Lake of the Ozarks having safe quality water.

As such, safe water quality is vitally important to the lake community. Listing the Lake of the Ozarks as "impaired" suggests that the water in the Lake of the Ozarks is not safe for fish and wildlife, and we feel that conclusion is patently wrong.

The Lake of the Ozarks community will indeed rally to do what is necessary to protect its Lake water quality, however, limited tax dollars and resources must be spent wisely. Not only would EPA's decision bring an unnecessary and damaging "black eye" to the Lake community, it also may lead to higher water utility bills for residents; all to fix a problem that simply does not exist.

In our view, EPA's decision to add the Lake of the Ozarks to the 303d list appears to have been a rushed decision by EPA. We believe the methods that EPA relied upon to propose listing the Lake of the Ozarks as impaired for nutrients did not appropriately adhere to the State's Water Quality Standards (WQS) and Listing

Methodology Document (LMD) and is not supported by corresponding water quality data or site-investigation information. Examples include:

- Lake of the Ozarks' Ecoregion - EPA's decision to list the Lake of the Ozarks as impaired is perpetuating an ecoregion assignment error which was unintentionally made for this Lake. We strongly believe the Lake of the Ozarks was previously assigned to the "Ozarks Highland" ecoregion by mistake. We believe the Lake of the Ozarks should have been assigned to the "Plains" ecoregion. The Department has also strongly acknowledged the Ozarks Highland ecoregion may not be a proper fit for the Lake, and has indicated they wish to re-evaluate the ecoregion status because of its significant drainage and flow nexus with Truman Reservoir. Truman Reservoir is assigned to the Plains ecoregion.
- Evidence does not support listing - In the fish kill data that EPA used to determine the impairment status at the Lake, there is no conclusive evidence that these events were caused by nutrients. Most of the Lake of the Ozarks fish kill events referenced by EPA are clearly attributed to freezing weather, blunt force trauma, and natural disease, none of which have anything to do with nutrients. It is blatantly wrong to list the Lake of the Ozarks as impaired for nutrients without direct corresponding evidence of nutrient impacts. However, based upon EPA's supporting information, it appears EPA used this fish kill data to base their decision at Lake of the Ozarks.
- Data quality issues abound - Data EPA relied upon at Lake of the Ozarks came in after the State's "cut-off date" and/or after the Department finished their 303d assessment process. The department did not have the opportunity to properly examine this data internally, nor with stakeholders or with the Missouri Department of Conservation, the agency whom actually collected it. There are many quality control issues within this data, namely lacking solid evidence or a clear connection to eutrophication factors or nutrient related causes. EPA should not have relied upon its own speculation or interpretations to make assessment decisions. We believe that the Lake of the Ozarks should be removed from EPA's proposed listing decision.

## Conclusion

Keeping Missouri in the lead role in developing and administering its water quality standards and assessment program best serves the CWA's federalism policy and best serves Missouri waters. We strongly encourage EPA to consider these comments as well as comments submitted by the Department and make the requested changes.

Again, thank you for the opportunity to provide comments.

Regards,



Jay Fischer, President

MISSOURI CORN GROWERS ASSOCIATION



Ronnie Russell, President

MISSOURI SOYBEAN ASSOCIATION

cc: Chris Wieberg, Missouri Department of Natural Resources