

# APPENDIX B – REGULATORY FRAMEWORK AND REFERENCE CONDITION APPROACH

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## ACRONYMS

<b>Acronym</b>	<b>Definition</b>
ARM	Administrative Rules of Montana
BER	Board of Environmental Review (Montana)
CWA	Clean Water Act
DEQ	Department of Environmental Quality (Montana)
EPA	Environmental Protection Agency (U.S.)
MCA	Montana Code Annotated
TMDL	Total Maximum Daily Load
TN	Total Nitrogen
TP	Total Phosphorus
TPA	TMDL Planning Area
TSS	Total Suspended Solids
UAA	Use Attainability Analysis
WQA	Water Quality Act
WQS	Water Quality Standards

This appendix presents details about applicable Montana Water Quality Standards (WQS) and the general and statistical methods used for development of reference conditions.

## **B1.0 TMDL DEVELOPMENT REQUIREMENTS**

Waterbodies, or individual waterbody segments where streams have been split into multiple segments, can become impaired from a variety of causes defined as either pollutants or non-pollutants. Pollutants include sediment, temperature, nutrients, and metals. Non-pollutants include flow alterations and different forms of habitat degradation. Section 303 of the Federal Clean Water Act (CWA) and the Montana Water Quality Act (WQA) (Section 75-5-703) require development of Total Maximum Daily Loads (TMDLs) for impaired waterbodies where one or more pollutants are the cause of impairment within the waterbody segment of interest.

Section 303(d) requires states to submit a list of impaired waterbodies in need of TMDL development to the U.S. Environmental Protection Agency (EPA) every 2 years. This list is referred to as the 303(d) list, and only includes waterbodies with impairment causes linked to a pollutant as defined under the CWA. The 303(d) list also includes the suspected source(s) of the pollutants of concern such as various land-use activities. Prior to 2004, EPA and the Montana Department of Environmental Quality (DEQ) defined the 303(d) list as the list of all impaired waterbodies and associated impairment causes (pollutants and non-pollutants), versus just those waters with impairment causes linked to pollutants. Montana integrates the 303(d) list within the 305(b) report, which contains an assessment of Montana's water quality, information on streams impaired by non-pollutants, TMDL development status, and a description of Montana's water quality programs. This 305(b) report is also referred to as the Integrated Water Quality Report.

Under Montana state law, an "impaired waterbody" is defined as a waterbody or stream segment for which sufficient credible data show that the waterbody or stream segment is failing to achieve compliance with applicable WQS (Montana WQA; Section 75-5-103(11)). State law (Montana Code Annotated (MCA) 75-5-702) identifies that a sufficient credible data methodology for determining the impairment status of each waterbody is used for consistency; the actual methodology is identified in DEQ's Water Quality Assessment Process and Methods (Montana Department of Environmental Quality, 2006). This methodology was developed via a public process and was incorporated into the EPA-approved 2000 version of the 305(b) report.

A TMDL is a pollutant budget for a waterbody identifying the maximum amount of the pollutant that a waterbody can assimilate without causing applicable WQS to be exceeded. TMDLs are often expressed in terms of an amount, or mass, of a particular pollutant over a particular time period (e.g., pounds of total nitrogen (TN) per day). TMDLs can also be expressed in other appropriate measures such as a percent reduction in pollutant loading. TMDLs must account for loads/impacts from point and nonpoint sources in addition to natural background sources and must incorporate a margin of safety and consider influences of seasonality on analysis and compliance with WQS.

To satisfy the Federal CWA and Montana state law, TMDL development will eventually be needed for each waterbody-pollutant combination identified on Montana's 2012 303(d) List of impaired waters in the Yaak TMDL Planning Area (TPA), unless new data and associated analyses is sufficient to remove a pollutant cause of impairment from one or more waterbodies. State law (Administrative Rules of Montana (ARM) 75-5-703(8)) also directs DEQ to "...support a voluntary program of reasonable land,

soil, and water conservation practices to achieve compliance with WQS standards for nonpoint source activities for waterbodies that are subject to a TMDL...” This is an important directive that is reflected in the overall TMDL development and implementation strategy within this plan. It is important to note that water quality protection measures are not considered voluntary where such measures are already a requirement under existing federal, state, or local regulations.

## **B2.0 APPLICABLE WATER QUALITY STANDARDS**

WQS include the uses designated for a waterbody, the legally enforceable standards that ensure that the uses are supported, and a nondegradation policy that protects the high quality of a waterbody. The ultimate goal of this TMDL document, once implemented, is to ensure that all designated beneficial uses are fully supported and all standards are met. WQS form the basis for the targets described in **Section 5.0** of the main document. These sections provide a summary of the applicable WQS for sediment and nutrients. The sediment and nutrient TMDLs presented in this document also inherently address the additional non-pollutant causes of impairment identified in **Section 1.0** of the main document, **Table 1-1**.

### **B2.1 CLASSIFICATION AND BENEFICIAL USES**

Classification is the assignment (designation) of a single or group of uses to a waterbody based on the potential of the waterbody to support those uses. Designated Uses or Beneficial Uses are simple narrative descriptions of water quality expectations or water quality goals. There are a variety of “uses” of state waters including growth and propagation of fish and associated aquatic life; drinking water; agriculture; industrial supply; and recreation and wildlife. The Montana WQA directs the Board of Environmental Review (BER) to establish a classification system for all waters of the state that includes their present (when the Act was originally written) and future most beneficial uses (§ 75-5-301(1), MCA) and to adopt standards to protect those uses ((§ 75-5-301(1), MCA).

Montana, unlike many other states, uses a watershed based classification system with some specific exceptions. As a result, *all* waters of the state are classified and have designated uses and supporting standards. Some waters may not actually be used for a specific designated use, for example as a public drinking water supply; however, the quality of that waterbody must be maintained suitable for that designated use. When natural conditions limit or preclude a designated use, permitted point source discharges or nonpoint source activities or pollutant discharges may not make the natural conditions worse.

Modification of classifications or standards that would lower a water’s classification or a standard (i.e., B-1 to a B-3), or removal of a designated use because of natural conditions can only occur if the water was originally misclassified. All such modifications must be approved by the BER, and are undertaken via a Use Attainability Analysis (UAA) that must meet EPA requirements (40 Code of Federal Regulations 131.10(g), (h) and (j)). The UAA and findings presented to the BER during rulemaking must prove that the modification is correct and all existing uses are supported. An existing use cannot be removed or made less stringent.

Descriptions of Montana’s surface water classifications and designated beneficial uses are presented in **Table B-1**.

**Table B-1. Montana Surface Water Classifications and Designated Beneficial Uses**

<b>Classification</b>	<b>Designated Uses</b>
<b>A-CLOSED CLASSIFICATION:</b>	Waters classified A-Closed are to be maintained suitable for drinking, culinary and food processing purposes after simple disinfection.
<b>A-1 CLASSIFICATION:</b>	Waters classified A-1 are to be maintained suitable for drinking, culinary and food processing purposes after conventional treatment for removal of naturally present impurities.
<b>B-1 CLASSIFICATION:</b>	Waters classified B-1 are to be maintained suitable for drinking, culinary and food processing purposes after conventional treatment; bathing, swimming and recreation; growth and propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply.
<b>B-2 CLASSIFICATION:</b>	Waters classified B-2 are to be maintained suitable for drinking, culinary and food processing purposes after conventional treatment; bathing, swimming and recreation; growth and marginal propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply.
<b>B-3 CLASSIFICATION:</b>	Waters classified B-3 are to be maintained suitable for drinking, culinary and food processing purposes after conventional treatment; bathing, swimming and recreation; growth and propagation of non-salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply.
<b>C-1 CLASSIFICATION:</b>	Waters classified C-1 are to be maintained suitable for bathing, swimming and recreation; growth and propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply.
<b>C-2 CLASSIFICATION:</b>	Waters classified C-2 are to be maintained suitable for bathing, swimming and recreation; growth and marginal propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply.
<b>C-3 CLASSIFICATION:</b>	Waters classified C-3 are to be maintained suitable for bathing, swimming and recreation; growth and propagation of non-salmonid fishes and associated aquatic life, waterfowl and furbearers. The quality of these waters is naturally marginal for drinking, culinary and food processing purposes, agriculture and industrial water supply. Degradation which will impact established beneficial uses will not be allowed.
<b>I CLASSIFICATION:</b>	The goal of the State of Montana is to have these waters fully support the following uses: drinking, culinary and food processing purposes after conventional treatment; bathing, swimming and recreation; growth and propagation of fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply.

## **B2.2 NUMERIC AND NARRATIVE WATER QUALITY STANDARDS**

In addition to the Use Classifications described above, Montana’s WQS include numeric and narrative criteria as well as a nondegradation policy.

Numeric surface WQS have been developed for many parameters to protect human health and aquatic life. Most of these standards are contained within the Department Circular Water Quality Bureau-7 (Montana Department of Environmental Quality, 2010). The numeric human health standards have been developed for parameters determined to be toxic, carcinogenic, or harmful and have been established at levels to be protective of long-term (i.e., lifelong) exposures as well as through direct contact such as swimming.

The numeric aquatic life standards include chronic and acute values that are based on extensive laboratory studies including a wide variety of potentially affected species, a variety of life stages and durations of exposure. Chronic aquatic life standards are protective of long-term exposure to a

parameter. The protection afforded by the chronic standards includes detrimental effects to reproduction, early life stage survival and growth rates. In most cases the chronic standard is more stringent than the corresponding acute standard. Acute aquatic life standards are protective of short-term exposures to a parameter and are not to be exceeded.

Narrative standards have been developed for substances or conditions for which sufficient information does not exist to develop specific numeric standards. The term “Narrative Standards” commonly refers to the General Prohibitions in ARM 17.30.637 and other descriptive portions of the surface WQS. The General Prohibitions are also called the “free from” standards; that is, the surface waters of the state must be free from substances attributable to discharges, including thermal pollution, that impair the beneficial uses of a waterbody. Uses may be impaired by toxic or harmful conditions (from one or a combination of parameters) or conditions that produce undesirable aquatic life. Undesirable aquatic life includes bacteria, fungi, and algae.

## B2.3 POLLUTANT SPECIFIC STANDARDS

The standards applicable to the TMDLs addressed in Yaak TPA document are summarized below.

### B2.3.1 Nutrient Standards

The narrative standards applicable to nutrients in Montana are contained in the General Prohibitions of the surface WQS (ARM 17.30.637 et seq.). The prohibition against the creation of “*conditions which produce undesirable aquatic life*” is generally the most relevant to nutrients. Undesirable aquatic life includes bacteria, fungi, and algae. Montana has recently developed draft nutrient criteria for TN and total phosphorus (TP) based on the level III ecoregion in which a stream is located (Suplee and Watson, 2013a). In addition, Suplee and Watson (2013a) developed a target for nitrate (also known as nitrate+nitrite nitrogen or  $\text{NO}_2+\text{NO}_3$ ) for the Northern Rockies Level III Ecoregion that provides an appropriate numeric translation of the applicable narrative nutrient water quality standard. For the Northern Rockies Level III Ecoregion, draft water quality criteria for TN and TP and the target for nitrate are presented in **Table B-2**. This target and the proposed criteria are growing season, or summer, values applied from July 1<sup>st</sup> through September 30<sup>th</sup>. Additionally, numeric human health standards exist for nitrogen (**Table B-3**), but the narrative standard is most applicable to nutrients as the concentration in most waterbodies in Montana is well below the human health standard and the nutrients contribute to undesirable aquatic life at much lower concentrations than the human health standard.

**Table B-2. Nitrate Target and Proposed Numeric Nutrient and Criteria for the Northern Rockies Ecoregion**

Parameter	Criteria/Target
Nitrate (Nitrate+Nitrite)	$\leq 0.100 \text{ mg/L}^a$
Total Nitrogen	$\leq 0.275 \text{ mg/L}^b$
Total Phosphorus	$\leq 0.025 \text{ mg/L}^b$

<sup>a</sup> From Suplee et al. (2008)

<sup>b</sup> From Suplee and Watson (2013b)

**Table B-3. Human Health Standards for Nitrogen for the State of Montana**

Parameter	Human Health Standard ( $\mu\text{L}$ ) <sup>a</sup>
Nitrate as Nitrogen ( $\text{NO}_3\text{-N}$ )	10,000
Nitrite as Nitrogen ( $\text{NO}_2\text{-N}$ )	1,000
Nitrate plus Nitrite as N	10,000

<sup>a</sup> Maximum allowable concentration

## B2.4 NONDEGRADATION

High quality waters are afforded an additional level of protection by the nondegradation rules (ARM 17.30.701 et seq.) and in statute (75-5-303 MCA). Changes in water quality must be “non-significant,” or an authorization to degrade must be granted by the Department. However, under no circumstance may standards be exceeded. It is important to note that waters that meet or are of better quality than a standard are high quality for that parameter, and nondegradation policies apply to new or increased discharges to the waterbody. Although these nondegradation rules are not integrated into TMDL development, they help limit pollutant loading in waters where designated uses are currently satisfied. Some of these waters may be healthy tributaries to waters where a TMDL is developed; thus nondegradation can help implement TMDL related pollutant controls at a watershed scale.

## B3.0 REFERENCE CONDITIONS

### B3.1 DEQ APPROACH FOR DEFINING A REFERENCE CONDITION

DEQ uses the reference condition to evaluate compliance with many of the narrative WQS. The term “reference condition” is defined as the condition of a waterbody capable of supporting its present and future beneficial uses when all reasonable land, soil, and water conservation practices have been applied. In other words, reference condition reflects a waterbody’s greatest potential for water quality given historic land-use activities. Although sediment water quality targets typically relate most directly to the aquatic life use, the targets are protective of all designated beneficial uses because they are based on the reference approach, which strives for the highest possible condition.

DEQ applies the reference condition approach for making beneficial-use support determinations for certain pollutants (such as sediment) that have specific narrative standards. All classes of waters are subject to the provision that there can be no increase above naturally occurring concentrations of sediment and settleable solids, oils, or floating solids sufficient to create a nuisance or render the water harmful, detrimental, or injurious. These levels depend on site-specific factors, so the reference conditions approach is used.

Montana WQS do not contain specific provisions addressing detrimental modifications of habitat. However, detrimental modifications of habitat may often lead to or result from increases above naturally occurring concentrations of sediment, etc., and therefore the reference condition approach is used to help determine whether beneficial uses are supported when habitat modifications are present. The reference approach can also be used to develop riparian and shade target parameters when evaluating temperature.

Waterbodies used to determine reference condition are not necessarily pristine or perfectly suited to giving the best possible support to all possible beneficial uses. Reference condition also does not reflect

an effort to turn the clock back to conditions that may have existed before human settlement, but is intended to accommodate natural variations in biological communities, water chemistry, etc. due to climate, bedrock, soils, hydrology, and other natural physiochemical differences. The intention is to differentiate between natural conditions and widespread or significant alterations of biology, chemistry, or hydrogeomorphology due to human activity. Therefore, reference conditions should reflect minimum impacts from human activities. It attempts to identify the potential condition that could be attained (given historical land use) by the application of reasonable land, soil, and water conservation practices. DEQ realizes that pre-settlement water quality conditions usually are not attainable.

Comparison of conditions in a waterbody to reference waterbody conditions must be made during similar season and/or hydrologic conditions for both waters. For example, the Total Suspended Solids (TSS) of a stream at base flow during the summer should not be compared to the TSS of reference condition that would occur during a runoff event in the spring. In addition, a comparison should not be made to the lowest or highest TSS values of a reference site, which represent the outer boundaries of reference conditions. The following methods may be used to determine reference conditions:

#### **Primary Approach**

- Comparing conditions in a waterbody to baseline data from minimally impaired waterbodies that are in a nearby watershed or in the same region having similar geology, hydrology, morphology, and/or riparian habitat.
- Evaluating historical data relating to condition of the waterbody in the past.
- Comparing conditions in a waterbody to conditions in another portion of the same waterbody, such as an unimpaired segment of the same stream.

#### **Secondary Approach**

- Reviewing literature (e.g., a review of studies of fish populations, etc., that were conducted on similar waterbodies that are least impaired).
- Seeking expert opinion (e.g., expert opinion from a regional fisheries biologist who has a good understanding of the waterbody's fisheries health or potential).
- Applying quantitative modeling (e.g., applying sediment transport models to determine how much sediment is entering a stream based on land-use information, etc.).

DEQ uses the primary approach for determining reference condition if adequate regional or other primary reference data is available, and uses the secondary approach to estimate reference condition when primary approach data is limited or unavailable. DEQ often uses more than one approach to determine reference condition, especially when regional reference condition data are sparse or nonexistent.

### **B3.2 USE OF STATISTICS FOR DEVELOPING REFERENCE VALUES OR RANGES**

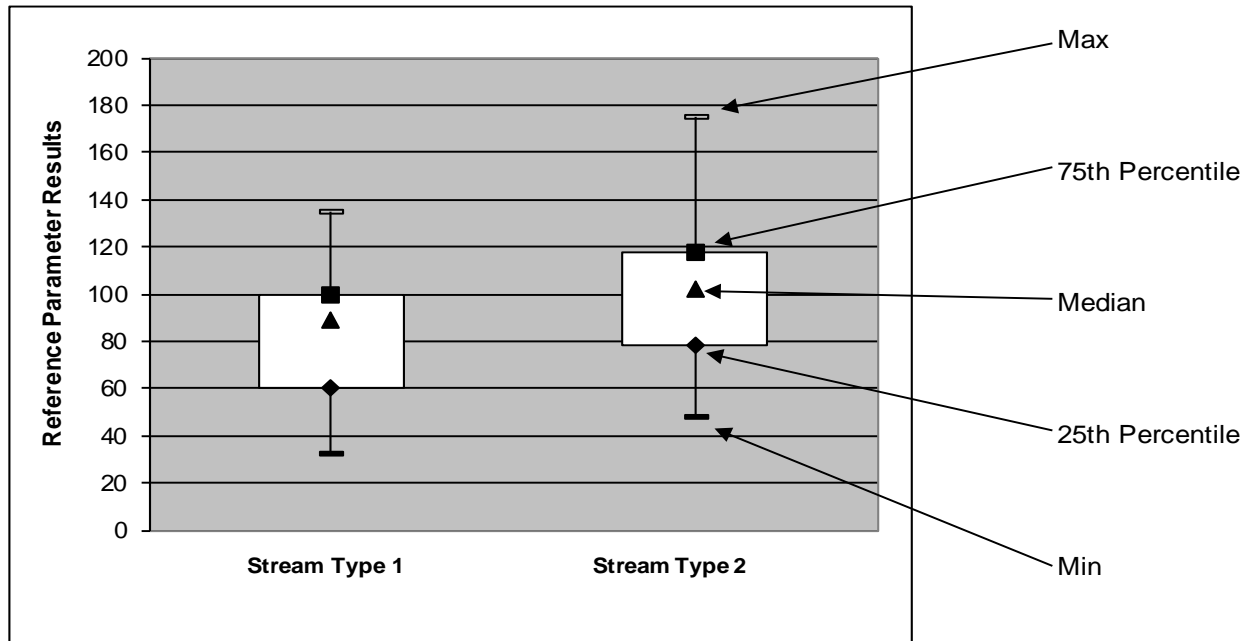
Reference value development must consider natural variability as well as variability that can occur as part of field measurement techniques. Statistical approaches are commonly used to help incorporate variability. One statistical approach is to compare stream conditions to the mean (average) value of a reference data set to see if the stream condition compares favorably to this value or falls within the range of one standard deviation around the reference mean. The use of these statistical values assumes a normal distribution; whereas, water resources data tend to have a non-normal distribution (Helsel and Hirsch, 1995). For this reason, another approach is to compare stream conditions to the median value of a reference data set to see if the stream condition compares favorably to this value or falls within the



range defined by the 25<sup>th</sup> and 75<sup>th</sup> percentiles of the reference data. This is a more realistic approach than using one standard deviation since water quality data often include observations considerably higher or lower than most of the data. Very high and low observations can have a misleading impact on the statistical summaries if a normal distribution is incorrectly assumed, whereas statistics based on non-normal distributions are far less influenced by such observations.

**Figure B-1** is an example boxplot type presentation of the median, 25<sup>th</sup> and 75<sup>th</sup> percentiles, and minimum and maximum values of a reference data set. In this example, the reference stream results are stratified by two different stream types. Typical stratifications for reference stream data may include Rosgen stream types, stream size ranges, or geology. If the parameter being measured is one where low values are undesirable and can cause harm to aquatic life, then measured values in the potentially impaired stream that fall below the 25<sup>th</sup> percentile of reference data are not desirable and can be used to indicate impairment. If the parameter being measured is one where high values are undesirable, then measured values above the 75<sup>th</sup> percentile can be used to indicate impairment.

The use of a non-parametric statistical distribution for interpreting narrative WQS or developing numeric criteria is consistent with EPA guidance for determining nutrient criteria (U.S. Environmental Protection Agency, 1999). Furthermore, the selection of the applicable 25<sup>th</sup> or 75<sup>th</sup> percentile values from a reference data set is consistent with ongoing DEQ guidance development for interpreting narrative WQS where it is determined that there is “good” confidence in the quality of the reference sites and resulting information (Suplee, 2004). If it is determined that there is only a “fair” confidence in the quality of the reference sites, then the 50<sup>th</sup> percentile or median value should be used, and if it is determined that there is “very high” confidence, then the 90<sup>th</sup> percentile of the reference data set should be used. Most reference data sets available for water quality restoration planning and related TMDL development, particularly those dealing with sediment and habitat alterations, would tend to be “fair” to “good” quality. This is primarily due to a the limited number of available reference sites/data points available after applying all potentially applicable stratifications on the data, inherent variations in monitoring results among field crews, the potential for variations in field methodologies, and natural yearly variations in stream systems often not accounted for in the data set.



**Figure B-1. Boxplot Example for Reference Data**

The above 25<sup>th</sup> to 75<sup>th</sup> percentile statistical approach has several considerations:

- It is a simple approach that is easy to apply and understand.
- About 25% of all streams would naturally fall into the impairment range. Thus, it should not be applied unless there is some linkage to human activities that could lead to the observed conditions. Where applied, it must be noted that the stream's potential may prevent it from achieving the reference range as part of an adaptive management plan.
- About 25% of all streams would naturally have a greater water quality potential than the minimum water quality bar represented by the 25<sup>th</sup> to 75<sup>th</sup> percentile range. This may represent a condition where the stream's potential has been significantly underestimated. Adaptive management can also account for these considerations.
- Obtaining reference data that represents a naturally occurring condition can be difficult, particularly for larger waterbodies with multiple land uses within the drainage. This is because all reasonable land, soil, and water conservation practices may not be in place in many larger waterbodies across the region. Even if these practices are in place, the proposed reference stream may not have fully recovered from past activities, such as riparian harvest, where reasonable land, soil, and water conservation practices were not applied.
- A stream should not be considered impaired unless there is a relationship between the parameter of concern and the beneficial use such that not meeting the reference range is likely to cause harm or other negative impacts to the beneficial use as described by the WQS. In other words, if not meeting the reference range is not expected to negatively impact aquatic life, coldwater fish, or other beneficial uses, then an impairment determination should not be made based on the particular parameter being evaluated. Relationships that show an impact to the beneficial use can be used to justify impairment based on the above statistical approach.

As identified in (2) and (3) above, there are two types of errors that can occur due to this or similar statistical approaches where a reference range or reference value is developed: (1) A stream could be considered impaired even though the naturally occurring condition for that stream parameter does not

meet the desired reference range or (2) a stream could be considered not impaired for the parameter(s) of concern because the results for a given parameter fall just within the reference range, whereas the naturally occurring condition for that stream parameter represents much higher water quality and beneficial uses could still be negatively impacted. The implications of making either of these errors can be used to modify the above approach, although the approach used will need to be protective of water quality to be consistent with DEQ guidance and WQS (Suplee, 2004). Either way, adaptive management is applied to this water quality plan and associated TMDL development to help address the above considerations.

Where the data does suggest a normal distribution, or reference data is presented in a way that precludes use of non-normal statistics, the above approach can be modified to include the mean plus or minus one standard deviation to provide a similar reference range with all of the same considerations defined above.

#### Options When Regional Reference Data is Limited or Does Not Exist

In some cases, there is very limited reference data and applying a statistical approach like above is not possible. Under these conditions, the limited information can be used to develop a reference value or range, with the need to note the greater level of uncertainty and perhaps a greater level of future monitoring as part of the adaptive management approach. These conditions can also lead to more reliance on secondary type approaches for reference development.

Another approach would be to develop statistics for a given parameter from all streams within a watershed or region of interest (Buck et al., 2000). The boxplot distribution of all the data for a given parameter can still be used to help determine potential target values knowing that most or all of the streams being evaluated are either impaired or otherwise have a reasonable probability of having significant water quality impacts. Under these conditions you would still use the median and the 25<sup>th</sup> or 75<sup>th</sup> percentiles as potential target values, but you would use the 25<sup>th</sup> and 75<sup>th</sup> percentiles in a way that is opposite from how you use the results from a regional reference distribution. This is because you are assuming that, for the parameter being evaluated, as many as 50% to 75% of the results from the whole data distribution represent questionable water quality. **Figure B-2** is an example statistical distribution of an entire dataset where lower values represent better water quality (and reference data are limited). In **Figure B-2**, the median and 25<sup>th</sup> percentiles of all data represent potential target values versus the median and 75<sup>th</sup> percentiles discussed above for regional reference distribution. Whether you use the median, the 25<sup>th</sup> percentile, or both should be based on an assessment of how impacted all the measured streams are in the watershed. Additional consideration of target achievability is important when using this approach. Also, there may be a need to also rely on secondary reference development methods to modify how you apply the target and/or to modify the final target value(s). Your certainty regarding indications of impairment may be lower using this approach, and you may need to rely more on adaptive management as part of TMDL implementation.

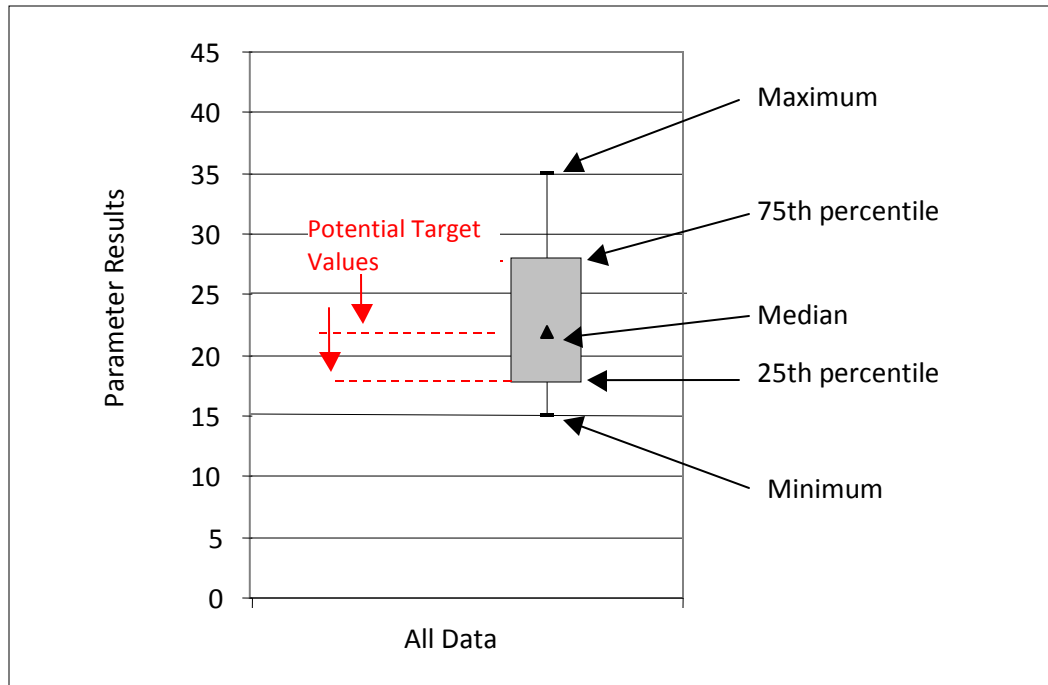


Figure B-2. Boxplot Example for the Use of All Data to Set Targets

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